INQUIRY

MAGAZINE

MARCH 19, 1979 • $1.25

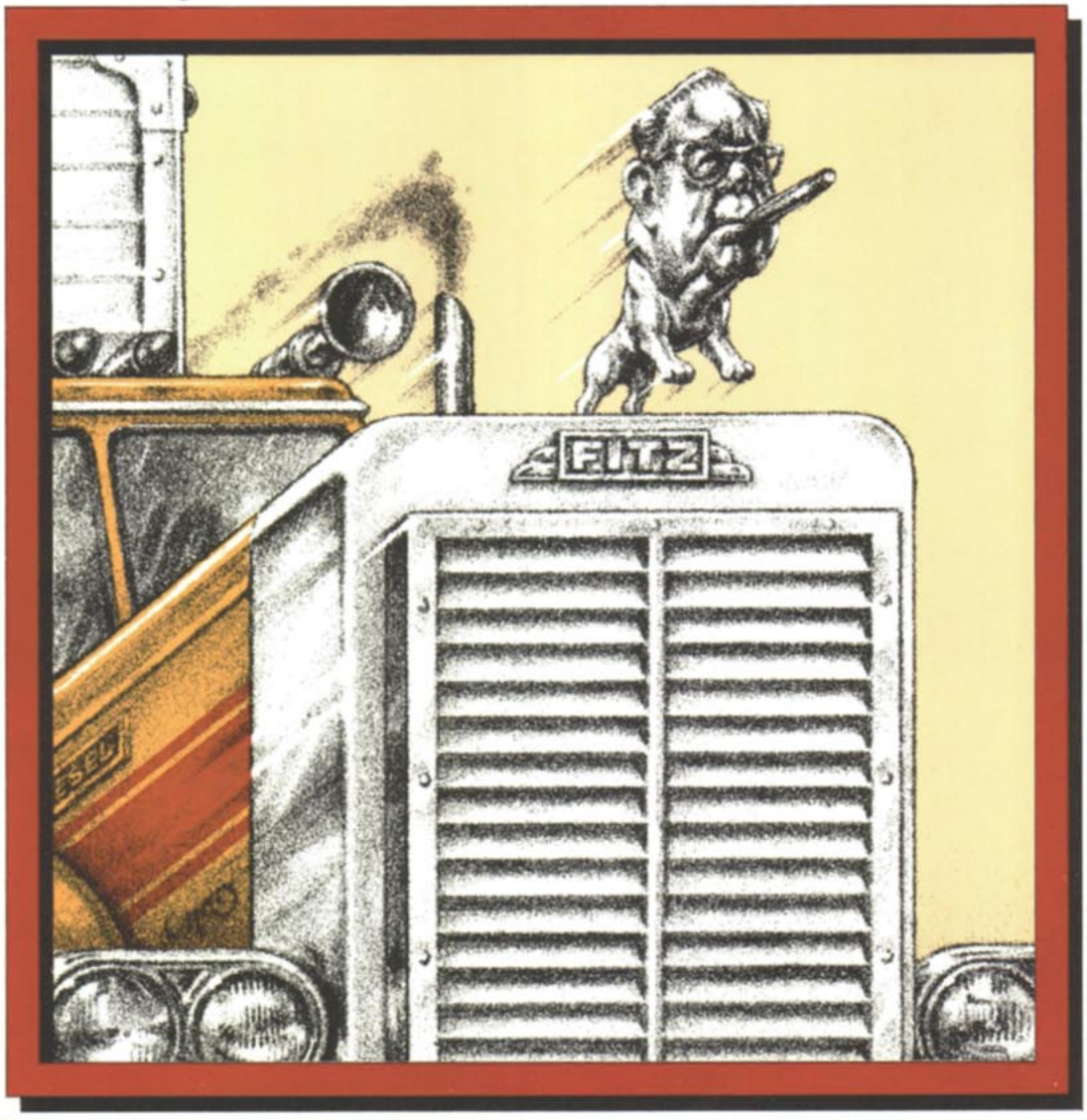
Alaskans Up in Arms Against the Feds

Official Piracy on California's Coast

Kidnapping Cultists; Vietnam Apologists

TEAMSTERPOWER

By MICHAEL MCMENAMIN



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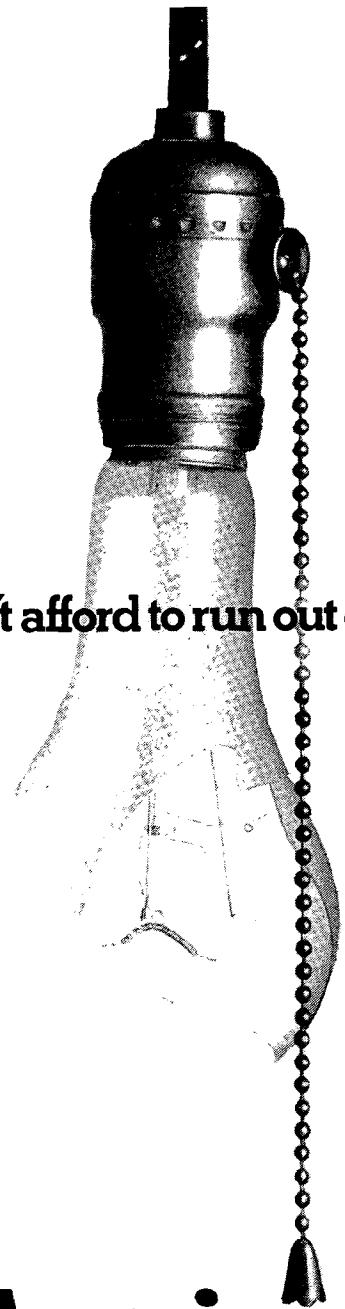

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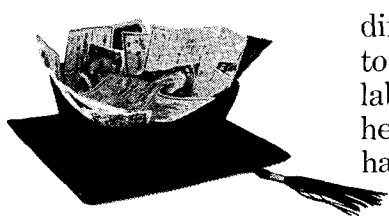

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MARCH 19, 1979

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RES PUBLICA

The K is for kook

■ I regret the degree to which the CIA has been emasculated in recent years, and we are paying for it now and not only in Iran. . . . [I]t has affected the psychological balance. I would have thought that as late as five years ago opponents of the United States in a country like Iran might well have feared an American reaction; they might well have concluded—overestimating the CIA's capacities—that we simply would not tolerate an assault on the political structure of so close an ally. . . . Destroying the mystique of the CIA is in itself a psychological handicap.

—HENRY KISSINGER, *in The Economist, Feb. 10, 1979*

And to think, they once called us a paper tiger

■ Deputy Prime Minister Teng Hsiao-ping of China . . . told [former Japanese Prime Minister] Fukuda that American failure to be firm in Iran might have repercussions in Saudi Arabia, Pakistan and India. . . . "The measures the United States has taken in Iran and in dealing with Cuba are no good," [said Teng]. "The United States should move responsibly. The Soviet Union will never be impressed by halfway positions."

—*New York Times, Feb. 8, 1979*

All this and a cracker gap too

■ Survival rations stocked in thousands of New York City fallout shelters more than a decade ago are now considered a hazard because the high-nutrition crackers that were the mainstay of the emergency-food menu have turned rancid and could cause illness in humans who happen to eat them.

—*New York Times, Feb. 3, 1979*

[sic]

■ America has the greatest economic system in the world. Let's reduce government interference and give it a chance to work.

And I call on Congress to . . . expand our exports and protect American jobs threatened by unfair trade. . . .

—JIMMY CARTER, *State of the Union Address, Jan. 23, 1979*

Why give up a good policy

■ Yesterday the National Security Council's Security Coordinating Committee met at the White House for almost two hours to evaluate events in Iran and lay plans for evacuating remaining Americans as well as sensitive military equipment sold to Iran by the U.S. Afterward, Pentagon officials said 69 U.S. marines are being dispatched to Turkey in case an emergency rescue of Americans in Iran becomes necessary.

—*Wall Street Journal, Feb. 12, 1979*

■ In a speech at a dinner given by Prince Sultan, the Saudi defense minister, [Secretary of Defense] Brown noted that every American President since World War II has committed the U.S. to protecting Saudi Arabia . . . and stated that "the American government is even more determined to provide the strength to meet external threats to the kingdom." . . .

It's too early to tell how much the Brown visit has calmed Saudi fears about U.S. resolve, but the initial signs suggest that the visit has been a success . . . "What's new is that it's being said in public and every American knows it," [said a top Saudi official]. "You are committed to the security of Saudi Arabia against external threat. . . ."

—*Same paper, same day*

This explains a lot

■ [Nelson Rockefeller] was once asked what he thought of his protégé, Dr. William J. Ronan, head of the Metropolitan Transit Authority. "He's doing a horrendous job," Mr. Rockefeller replied proudly. While reporters tittered, his staff gathered around him in consternation. He emerged to say he had meant to say "terrific." An aide explained that the Governor had always thought "horrendous" was a term of praise.

—*New York Times, Jan. 28, 1979*

How do you say fuck the army in Spanish?

■ Army Secretary Clifford Alexander has declared, "The Army does not and will not restrict the use of any language used by soldiers to communicate with each other." Alexander's comment came after Lieutenant Colonel William Landgraff, an infantry battalion commander in West Germany, prohibited Hispanic soldiers in his outfit from speaking Spanish while on duty.

—*San Francisco Chronicle, Feb. 8, 1979*

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The hawks ring a false alarm

Kissinger's scenario

THE LATEST MORSEL OF FOREIGN-policy nonsense being passed around at Washington cocktail parties these days is the so-called "six-war scenario." This is a list of six conflicts, each involving the Soviets in some way or another, which hawks point to as evidence that Russian behavior has not lived up to the code of détente. Among those touting this scenario is former Secretary of State Henry Kissinger, who from his exile in Georgetown is positioning himself to swoop down on whichever side of the SALT debate better serves his political ambitions.

A look at the list proves again that in Washington reasoned analysis is not mandatory when paranoia is more handy. According to the hawks, these six wars—the India-Pakistan war of 1971; the October war in the Middle East in 1973; the final Communist drive in Vietnam in 1975, the Angolan civil war; the conflict between Ethiopia and Somalia in 1977; and the current war between Vietnam and Cambodia—show that the Soviets, opportunistic and aggressive, are beginning to turn their growing military strength into political victories. In fact, the list proves no such thing. Paradoxically, it suggests just the opposite: that for the Soviets, like the Americans, military power can't readily be translated into lasting political advantage in the Third World. Consider the cases:

■ In 1971 India invaded what is now Bangla Desh, rescuing Bengali rebels from a bloody slaughter at the hands of Pakistan's Punjabi central government. The Soviets supported India diplomatically and with arms; the United States "tilted" toward Pakistan, sending an aircraft carrier to register American disappointment. The upshot? Today India is considered a close friend of the United States and one of the "new influentials" upon which Zbigniew Brzezinski is building his foreign policy.

■ After initial successes in the 1973 October war, Soviet-armed Egyptian and Syrian troops were routed by the Israelis. Subsequently, Egypt severed its close ties with the USSR and became economically and militarily dependent upon the United States. The Pentagon is now eyeing the possibility that the Egyptian army might become America's spear carrier in Africa and the Persian Gulf. A Soviet success?

■ In 1975 the Vietnamese Communists launched a final offensive that toppled the Saigon regime. Did anyone, Henry Kissinger included, ever expect any other outcome? And could the Soviets have prevented it, even had they wanted to?

■ It is now well known that the Soviet-Cuban support for the MPLA in Angola was a response to the CIA campaign to aid the other factions in the civil war. By the standards of the hawks this was a victory for the Russians, but the Soviets have good reason to wonder why, if theirs was the victory, Gulf still gets the oil.

■ In 1977 Somalia, buoyed by promises of arms from the United States, attacked Ethiopia in a dispute about the Ogaden region. With Soviet and Cuban support, the Ethiopians defeated the Somalis. By this success the Russians won the chance to support the Ethiopians in a long, costly, and embarrassing war against Eritrea, in a role the United States had played in the 1960s.

■ In Cambodia, the Vietnamese think they see light at the end of the tunnel. . . .

None of this denies, of course, that the Russians have meddled opportunistically in the affairs of other countries. But the record seems to show that such meddling doesn't pay off very often or affect America's security. When the hawks ring the alarms with their six-war scenario, it's not because there is danger, but because they are once again angling to become policemen to the world. ❏

New skeletons, old closets

GSA backdate

EVEN CLOSE READERS OF THE DAILY press might by now have forgotten that there's a scandal over at the General Services Administration. By some estimates the fraud and waste at the GSA run into hundreds of *millions* of taxpayers' dollars (*INQUIRY*, Dec. 25, 1978). But aside from a few obscure news items reporting the indictments of low-level GSA officials, the press has largely lost its enthusiasm for what may prove to be the biggest financial scandal in U.S. history.

But then, with only a handful of exceptions, the press has never been interested in exploring the cesspool of corruption at the agency. The GSA has always been a haven for political hacks of successive administrations, a patronage-ridden burial ground where political debts are laid to rest. The scandal has always been there, and it is hardly thanks to the press that at long last the truth is beginning to seep out.

Part of the problem, of course, is that both major political parties have always tacitly agreed to preserve the GSA as a gigantic bank for political payoffs. Since both parties are implicated, the press never saw much of a story—it's not like Watergate, where one party broke the rules to hurt the other.

To see how little is new at the GSA, we have only to consult those masters of political "hardball" who staffed the Nixon White House. In 1972 the administration was fran-

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tically looking for dirt with which to besmirch the reputation of Larry O'Brien, chairman of the Democratic National Committee; we all know what happened when the White House burglars broke into his offices at the Watergate apartments to plant their bugs and look for documents. While some members of the administration thought O'Brien's tax records ought to be scrutinized, others suggested investigating O'Brien's possible involvement in a corrupt lease of a Treasury Department office building.

On April 6, 1972, John Dean wrote a memo to Charles Colson, advising that it would be tough to tie O'Brien to a leasing scandal. "Even if this could be done," he cautioned, ". . . it is the consensus of all with whom I have discussed this that raising the issue might open a Pandora's Box that we would later regret opening. It is not that this Administration or prior Republican Administrations have been as culpable as it is obvious the Democrats were: rather charges of alleged impropriety could be leveled against the current GSA Administration, and our point would be lost in the smoke.

"This is not to say that I think we should forget the whole matter. For your information, Senator Proxmire has had GAO people investigating the GSA leasing policy for some time now. If it appears that the Senator will attempt to make this another of his causes during the election year, which I currently think is not a realistic possibility, we should be prepared to show that we are at worst guilty of bad judgment whereas the Democrats were actually guilty of criminal conversion, etc."

Dean was right: The Democrats have been as guilty as anyone of subverting the integrity of federal procurement policies. Recently, President Carter bowed to demands of House Speaker "Tip" O'Neill and hired Robert Griffin, a scandal-tainted former top administrator at the GSA, as a White House aide at $50,000 a year. The GSA administrator, Jay Solomon, is said to have privately complained to Senator Lawton Chiles (D-Fla.) that Griffin was using his White House position to derail the GSA investigation.

Solomon has been left to twist slowly in the wind. Despite a White House announcement that Carter had "full confidence" in the GSA chief, the President refused to act on Solomon's recommendation for the appointment of an inspector general. White House political hacks Hamilton Jordan, Charles Kirbo, and Griffin Bell quietly began looking for a successor to Solomon. The White House apparently thought Solomon's corruption investigation was too independent. "We're going to make it Jimmy Carter's issue, and not Jay Solomon's," explained a Carter aide. The message was clear: "If you stand up to corruption, you're not going to get the support you need," concluded Irwin Borowski, the GSA's special counsel.

But the Republicans have hardly been guilty of mere "bad judgment," to recall Dean's phrase. In 1970, for example, GSA administrator Robert L. Kunzig, a Nixon appointee, paid $52 million for a prospective lease to a friend and former law partner of then Senate Minority Leader Hugh Scott (R-Pa.)—even though other bids were lower, and although the office developers had no building permit, financing, construction contract, title to the land, or even a design for the building. Although the FBI's Philadelphia office had asked in 1973 for permission to carry out an investigation, not until 1975 did the Justice Department give its approval—a mere five months before the statute of limitations was to expire.

President Ford's record on the GSA was hardly better than that of his predecessor. In November 1975 he appointed as GSA administrator Jack Eckerd, owner of a chain of drug stores and a Republican party heavy. Only a month after Eckerd assumed his new post, the *Boston Globe* accused GSA officials of favoritism in letting more than half of New England's $8.7 million in federal construction contracts without competitive bidding. Did Eckerd push for an investigation? Not at all: He fired the GSA investigator, William Sullivan, who, apparently out of frustration at obstacles put in his path, had leaked the story to the *Globe*. Indeed, during Eckerd's administration, the GSA went on to award more than $500 million in uncompetitive contracts, according to a GAO study.

The problem has never been just corrupt or "bad" officials and contractors, though the GSA seems to attract those like flies. Rather, the billions of dollars at the GSA's disposal are inevitably a powerfully attractive source of patronage for Presidents and influential congressmen. Until the press exposes this larger political disease, and its persistence over the years, Congress and the executive branch will have no incentive to really clean up federal procurement. ❏

Iran is just an excuse

Controlling oil

FOR SEVERAL MONTHS, ENERGY CZAR James R. Schlesinger has been preparing the country for gasoline rationing, government allocation of fuel supplies, and delays in decontrolling the production of domestic crude oil. To justify these pet proposals Schlesinger has cited events in Iran but has disregarded Middle East analysts who universally agree that whoever governs in Tehran will have to export oil in order to sustain Iran's economy. As the analysts point out, Libya's production returned to normal after Qaddafi's takeover in 1969.

Schlesinger started laying the groundwork for government controls in an interview on "Face the Nation" in early January. Then, in early February, he escalated by claiming that the loss of oil supplies from Iran was "prospectively more serious" than the Arab oil embargo of 1973–74. And in an inadvertent display of candor, Schlesinger and Senator Paul Tsongas (D-Mass.) talked frankly about imposing mandatory conservation measures simply to convince the public that there was a crisis.

The stage is now set for controls, rationing, inspections, and allocations. These will be imposed to aid favored industries and to respond to problems that are entirely of the government's making. In its pursuit of energy controls, the Carter administration has increasingly isolated America from conditions on the world market by controlling domestic oil and natural gas prices. The price of domestic crude is one-third below world price levels. These artificial prices, in fact, discourage careful use and conservation. No amount of bureaucratic bafflegab can disguise the fact that a shortage—whether of oil or anything else—is a deliberate policy of a government that controls prices, rather than, as Schlesinger would have us believe, a phenomenon with a life of its own. ❏

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FIRST AMENDMENT WATCH

NAT HENTOFF

Kidnapping and the free exercise of religion

WHEN JONESTOWN became identified with terminal devotion to a religious cult, an American Civil Liberties Union lawyer predicted that one result would be a huge increase of desperate parents trying to remove their children, by any means necessary, from other cults.

He was right; and accordingly, ACLU attorneys are spending more time in court insisting that the First Amendment's guarantee of the free exercise of religion applies to *everyone* who has reached the age of majority (18 in some states; 21 in others).

A good many parents of cult members, however, claim that their progeny, of whatever age, have been brainwashed, coerced, and manipulated into enslavement. Therefore, these parents feel they have every right to rescue them. Some hire strongarm cadres to kidnap their children who are then forcibly detained and "deprogrammed" until they recognize the waywardness of their cultist beliefs.

Recently, the ACLU lawyer who had foreseen the rise in kidnappings after the grisly fall of the Peoples Temple, told me of a 27 year old who had been kidnapped from a Virginia outpost of the Unification Church (the Moonies). "Two hoods hired by his parents grabbed him," the lawyer said, "but he eventually made his escape and hid in a movie house where he sat through three showings of *The Invasion of the Body Snatchers* before he felt it was safe enough for him to contact me. You can imagine how eerie an experience that was for him."

On the other hand, there are those, including the young man's parents, who would seriously question which were the more baleful body snatchers —the kidnappers or the Moonies who had taken over his soul.

I agree with the ACLU that it was *his* soul to give, but I find that it is even harder to convincingly use First Amendment arguments with parents of cultists than it was with many Jews on the matter of Nazis demonstrating in Skokie. Indeed, were a national plebiscite held on whether it should be lawful for members of cults to be "rescued" against their will, a thumping majority of all citizens would be in favor. Meanwhile, in the wake of Jonestown, it is likely that Congress will establish a commission to determine whether religious cults are a destructive force in this land. If a commission so decides, bills to cripple those groups, in various ways, are sure to follow.

What greatly irritated certain members of Congress, and many citizens, was the disclosure, after Jonestown, that the State and Justice departments had turned away most requests for investigations of the Peoples Temple and other cults on the ground that the Constitution protects all religions from interference by the state. The Justice Department, buttressing this position, points to a 1976 New York State Supreme Court decision in Queens County. (The Supreme Court is one of the lower levels of that state's judiciary, but the language of the opinion was so clear and vigorous that it has had considerable influence among judges around the country.)

Two fervent disciples of Hare Krishna, aged 23 and 24, had been the objects of rescue missions by their parents. One mother, along with a private detective, had actually kidnapped her daughter. Kidnapping counts against the parents were dropped, but Hare Krishna was charged with unlawful detainment of the two converts. (How had Hare Krishna detained them? By the use of "mind control.")

Judge John J. Leahy, in dismissing the charges against the cult, trumpeted: "The court sounds the dire caveat to prosecutorial agencies throughout the length and breadth of our great nation that *all* of the rights of *all* our people . . . shall be zealously protected to the full extent of the law." And that includes the right to freely exercise one's religious beliefs.

"Religious proselytizing . . . and maintenance of belief through a strict regimen, meditation, chanting, self-denial . . . ," the judge added, "cannot under our laws—as presently enacted —be construed as criminal in nature and serve as a basis for criminal indictment."

But what about the brainwashing charge?

"The concept of mind control or brainwashing is not a crime in and of itself," said Judge Leahy.

SUPPOSE A LEGISLATIVE body tried to make "mind control or brainwashing" a crime. Is there any way in which that practice can be defined precisely enough to avert a veritable dragnet operation punishing proselytizers of ideas and religious beliefs despised by the majority?

Richard Delgado, professor of law at the University of Washington, thinks he has an answer to that conundrum. Brainwashing can be proved, he says, when "two essential elements of informed consent—knowledge and capacity—are not present simultaneously." By whose definition of "knowledge and capacity"? Under a law criminalizing "brainwashing" by this criterion the courts and psychiatrists could invade the First Amendment rights of the bizarrely unorthodox on a scale previously undreamt of in this republic.

But the Supreme Court has said in *Stanley* v. *Georgia* (1969) that the state "cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts."

An overwhelming faith in Hare Krishna or the Reverend Moon may seem ridiculous to you or me, but the profession of that faith is protected by the First Amendment—even from the claims of parents that a particular acolyte has been brainwashed.

Or, as a Hare Krishna spokesman said during the Queens court case, "Our members are no more brainwashed because they chant than the nuns who say the Rosary each day or

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those who attend churches that use the threat of fire and brimstone."

As an atheist, I think all believers in religion have been—to use the term loosely—"brainwashed," the nuns no less than the Hare Krishna folk. But the way the First Amendment works, the state must not get involved with what anyone believes or does not believe.

Put in the unequivocal words of the Supreme Court in *West Virginia State Board of Education* v. *Barnette* (1943): "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in . . . religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Even more relevant to the current assault on the cultists, there was *United States* v. *Seeger* (1965), in which Justice Tom Clark, speaking for the majority, emphasized that the *validity* of what an aspiring conscientious objector believes "cannot be questioned" by the government. Draft boards or courts "are not free to reject beliefs because they consider them 'incomprehensible.' Their task is to decide whether the beliefs professed by a registrant are *sincerely held* and whether they are, in his own scheme of things, religious" (emphasis added).

But some parents who cannot fathom how one of their children can have so changed as to embrace the "incomprehensible"—as I could not fathom such a leap into submission by my own children—genuinely believe in what deprogrammer Ted Patrick calls "the law of justification." By snatching their children back to reality, they are justified, says Patrick, "in committing an apparently illegal act in an emergency to prevent a greater harm."

What about the progeny's First Amendment rights? Says Patrick (presumably his clients and other deprogrammers agree): "When someone destroys your free will and your ability to think, and takes your mind, you don't have any more rights."

And that indeed is how many of the "rescued" are treated. They are not only kidnapped but are then held against their will until they confess their errors. Having no rights, a number have been beaten—as if they were going through an exorcism. One ACLU lawyer has reported that a young woman being deprogrammed had been battered unconscious not long after the news from Jonestown. "It's going to get worse," he said. "The deprogrammers are using violence more frequently, and more carelessly. Someone is going to be killed while being 'rescued'."

I have read a large number of court statements by cult members who have escaped after having been kidnapped, and they sound like the words of emigrés from a police state. Constant psychological, and some physical, assaults; deprivation of sleep; twisting and retwisting of statements by the accused; and an abundance of threats, particularly that of not being released from the inquisition until reconverted. Why, it might almost be called brainwashing.

NOT THAT THE CULTS themselves are innocent of repellent acts. The miasma that was the Peoples Temple has been extensively detailed, and other cults have become expert at vicious ways of getting back at their "enemies"—such as reporters who don't write what the cult would like to see. The harassment includes sheafs of libel suits, threatening phone calls, and diverse attempts to discredit the offender.

And it is quite likely that in some of these authoritarian retreats, things are being done that are against the law: manipulation of funds, extortion, sexual coercion, and retention of wavering believers against their will.

The First Amendment protects none of these activities, no more than it prevents prosecution of Reverend Moon if he is a covert agent of the South Korean government.

As Dean Kelley, an official of the National Council of Churches, points out: "If a sect is a front for a foreign government, then let that be investigated and demonstrated. If it is using its tax exemption for illegal or nonreligious purposes, then let that be demonstrated and the exemption revoked." And I would add that if it is proved that someone is being held forcibly by a cult, that is a crime and should be punished. Being forced by the head of a sect to engage in sex with him or anyone else is also a criminal offense, and the state must deal with such assaults under law.

"But otherwise," Dean Kelley says, when no law is being broken and no physical coercion is being used by a cult, "part of religious liberty is the right of all of us to make what seem to others to be foolish choices, to be 'hoodwinked,' to be exploited for the sake of what seems to us, at the time, to be the Truth. This is not justification for acting illegally against any religious group or its members."

Yet it is difficult not to be affected by long-distraught parents who find invocation of the First Amendment in the face of their anguish as incomprehensible as the cults their children have joined. The mother of a 25-year-old Moonie told me, in acute exasperation, "You're asking that I be treated as a criminal if I try to rescue my son from the clutches of a so-called church that is a corrupt extension of a corrupt foreign government. Oh God, I hope they get one of your kids."

As intended, the curse has stayed in my mind.

But the First Amendment does stand in these parents' way. Not only its guarantee of free exercise of religion. But also, as Jeremiah Gutman, the ACLU's expert in deprogramming, says, cult members are protected by the free speech and freedom of assembly clauses.

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IN THE LAST FEW YEARS, a corollary First Amendment theory has been developing with regard to children *under* the age of majority. Alan Sussman, an attorney and editor of the ACLU's *Children's Rights Report*, observes that minors have been acquiring more constitutional rights in the past decade as "persons" under the Constitution: free press rights in schools; in criminal cases, the right to be represented by counsel even if their parents would prefer otherwise; and certain rights of privacy. Actually, "a few courts even respect the control of a child over 'his' room in the family home, so that a parent cannot waive the right of his son or daughter to keep it secure from unwarranted state intrusion."

The Supreme Court, moreover, declared in 1976 that states cannot permit parents to override a minor child's right to have an abortion. And in nearly every state, children can get medical care—such as treatment for venereal disease—without the knowledge or consent of their parents.

Children, of course, are still in the custody of their parents. But, says Sussman, "I think that a good case could be made that the right to control a child's custody does not include the right to control his or her beliefs, reading habits, or reasonable out-of-the-home visits to a place of worship or instruction." He bases this argument "partly on the development of the legal rights of children themselves and partly on recognition of the practical limits of enforceable parental power."

Whether or not Sussman's case would currently hold up in court, he makes the obvious point that if a minor wants to deviate from his parents' religious beliefs, the latter "have no *effective* power to firmly regulate a child's religious direction in the home." (Consider how many apostasies began long before the age of majority.) "And the reluctance of family courts to involve themselves in intra-family religious disputes (and there are many examples of this) permits strong-willed children to exert themselves to a point where they gain the 'ability' if not the 'right' to believe and practice what they choose."

If this analysis proves accurate, the future looks promising for the growth of cults—a rather dismaying thought for many of us. Clearly the rights of cultists are going to continue to be a thorny test for true believers in the First Amendment.

CORPORATE STATE

MICHAEL MCMENAMIN

In bed with the ICC

*IT'S EASY TO UNDERESTI*mate Frank Fitzsimmons, the 70-year-old president of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. People—important people—have been doing it for years.

Jimmy Hoffa was one of them, probably the first. In 1967, Hoffa surprised virtually everyone in the Teamsters by appointing the hitherto obscure Fitzsimmons to warm his seat for him as Teamster president during his prison term for jury tampering. Then a Teamster vice president, Fitzsimmons in turn surprised Hoffa by latching onto the top job and its lavish perquisites as if he were born to it. Large, Irish, and inarticulate, Fitzsimmons twice won reelection as president in his own right. He even secured the release of his old boss from prison in 1971 with the convenient catch, courtesy of the Nixon administration, that Hoffa not involve himself in Teamster affairs until 1980. Hoffa's subsequent efforts to overturn this restriction, many believe, led to his disappearance and death in 1975.

Jimmy Carter is another, possibly the most recent, who has underestimated Frank Fitzsimmons. That miscalculation by Carter may lead to a death of another sort: the demise of Carter's ill-conceived "voluntary" wage-price guidelines. The Teamsters, with almost two and a half million members, are the largest, most powerful union in our country's history. And at the end of March, their single largest collective bargaining agreement—the National Master Freight Agreement covering over 400,000 employees—expires. Carter desperately needs the cooperation of Fitzsimmons and the Teamsters for the survival of his wage program. Because of the publicity that will attend one of the country's biggest union contracts, whatever economic package the Teamsters achieve for the National Master Freight Agreement will set a benchmark. Almost every union member in the country will know what the Teamsters achieved for their drivers and warehousemen and, however unrealistically, will be pressuring their respective union leaders to do the same or better when their current contracts expire.

Three years ago, after an unprecedented, albeit brief, nationwide strike, Fitzsimmons and the Teamsters received wage and fringe benefit increases in the range of 10.5 to 11.5 percent per year. That increase was achieved at a time when inflation had decreased from 11 percent in 1974 to only 7 percent by the end of 1975. If Fitzsimmons and the Teamsters do as well this time—and no one familiar with the situation expects anything less, no matter how artfully the Carter people adjust the figures after the fact—Jimmy Carter may as well shelve his "voluntary" 7 percent wage increase guidelines and call San Clemente to learn how *mandatory* wage-price controls work: They can't stop inflation either but they do wonders for your reelection chances.

Carter and his advisers apparently thought that Frank Fitzsimmons was an old fool whose abilities as a labor leader did not include basic mathematics. In September 1978, the administration arranged several meetings between Fitzsimmons and top union aides, and such administration officials as Hamilton Jordan, White House chief of staff; Charles Schultze, chairman of the Council of Economic Advisers; Barry Bosworth, director of the Council on Wage-Price Stability; Stuart Eizenstat, domestic affairs chief; Robert Strauss, then inflation czar; and Secretary of Labor Ray Marshall. The assembled wisdom of these Carter functionaries, who came equipped with charts, graphs, statistics, and pleas for cooperation, was presumably expected to obscure from Fitzsimmons the fact that inflation was running in excess of 9 percent a year while Jimmy wanted Frank and other union leaders to "voluntarily" settle for increases of

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7 percent a year. Fitzsimmons was unimpressed. He rejected Carter's guidelines as soon as they were issued, and subsequent revisions by the administration in December didn't change his mind.

ILLUSIONS DIE HARD AT the Carter White House. One of the more durable dreams has been that of Teamsters' compliance with the "voluntary" wage guidelines. Five months after the September meetings with Fitzsimmons, administration officials were still anonymously expressing "optimism" in the *Wall Street Journal* at the prospect of Teamster cooperation because, of all things, of the Teamsters' alleged "desire to improve their public image" and fear of "nonunion competition." Jimmy Carter demonstrated that the illusion is shared at the highest levels, by telling NBC News on January 15 that Teamsters' bargaining had always evidenced "a remarkable degree of responsibility."

Frank Fitzsimmons is not a fool and is not about to sell out the heart of his union—highway drivers and warehousemen—merely to conform to some politician's idea of what is "responsible." He is a shrewd and prideful man, the leader of a union so powerful that it can ignore the pious pleas of a President to help him bail out his bankrupt economic policies. Like many a monopoly before them, the Teamsters are strong enough to tell the government, in effect: We don't have to and we don't care.

How was such power acquired and what lies at its core? Some might say organized crime. But that would be both wrong and unfair. Unfair to the vast numbers of Teamster members and their local union leaders who have no connections with racketeering or organized crime. Wrong because the Teamsters are by and large an honest trade union seeking to maximize, in most instances, the economic welfare of its members who have seniority.

The Teamsters' well-publicized links with organized crime are, nevertheless, all too real. The McClellan committee investigation in the fifties, the "Get Hoffa" squad of the Kennedy Justice Department in the sixties, and the investigations of corruption and organized crime influence in the Teamsters' massive Central States Pension Fund by the Ford and Carter administrations in the seventies all bear witness to this. Two books published in 1978—*The Teamsters* by Steven Brill, and *The Hoffa Wars: Teamsters, Rebels, Politicians and the Mob* by Dan Moldea—bring the picture of Teamsters and racketeers into clear focus. Brill's book is a particularly perceptive portrayal of the top Teamster leaders today, enjoying the lush life that accompanies membership on the Teamsters executive board yet nervously aware, after Hoffa's death, that none of them could ever risk offending the organized crime bosses who had become their silent partners over the years.

The organized crime connection cannot explain Teamster power. It is an impressive testimonial to the extent of that power but it is still a consequence of that power, not its cause. The Teamsters didn't need organized crime to become the most economically powerful trade union in the country and they don't need it to stay the most powerful. What the Teamsters did need in their rise to power, they still need today—the Interstate Commerce Commission.

The ICC took a growing, competitive, decentralized industry and imposed a stultifying, rigid cartel.

Consider for a moment the purpose—and problems—of a trade union. Its purpose is to maximize the economic benefits it can obtain from employers. Its problems are many. If it has not succeeded in organizing all of the companies in a particular industry, it cannot maximize its power. So long as nonunion competitors are not paying the same labor costs, unionized companies in a competitive industry are not in a position to pass on all their wage increases to their customers. Or if they pass on their wage increases, they are likely to suffer severe losses in sales volume to their nonunion competitors. Ideally, therefore, what a trade union wants most is to remove labor costs entirely as an element of competition. If every company in an industry is unionized and experiences the same wage increases, the union is in a position to achieve its purpose—maximizing economic return to its members who have seniority, and also to its leaders.

WHAT USUALLY HAPPENS in diffuse decentralized industries that are highly competitive is that unions are not very powerful. Labor cost remains a competitive factor. Unionized companies are hard bargainers. They must be conscious of their nonunion competitors and they know wage increases can't be passed on to their customers unless their nonunion competitors raise their prices at the same time. "This is a feat of coordination," writes Professor Richard Chrisman in the *Antitrust Law and Economics Review*, "that [absent an effective cartel apparatus] cannot be accomplished unless those competitors are likewise experiencing identical wage [cost] increases."

The Teamsters faced such problems in the 1930s with the fledgling over-the-road trucking industry: It was decentralized with many small nonunion firms, and entry for new companies was relatively easy because of low capital investment requirements. Labor costs were the single largest expense in the trucking industry. Because of the intense competition, wage increases could not be passed on to customers. The inability of companies to pass these on, frequently led them to move their headquarters to cities where labor costs were lower.

Ease of entry and the fabled cutthroat competition: Not a pretty picture for a union in the 1930s contemplating the organization of over-the-road trucking. Fortunately for the Teamsters, they had something going for them: The Motor Carrier Act of 1935 and the Interstate Commerce Commission. The New Deal brought competition in over-the-road trucking to a rude halt. Too easy to go into interstate trucking? The ICC permitted only those over-the-road interstate truckers to operate who had received from it a "certificate of public convenience and necessity," which rigidly specified the routes to travel, terminals to use, and territory in which to operate. Too much dog-eat-dog competition in prices? The ICC eliminated competitive rates set by individual truckers and substituted uniform rates established by rate bureaus run by the truckers themselves and sanctioned by the ICC. In other words, the ICC took a growing, highly competitive, and decentral-

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ized industry—anybody who could buy a truck could go anywhere there was a road—and substituted a rigid, stultifying cartel where government consent and fixed rates were the rule, rather than market demand and competitive prices.

Lucky for Jimmy Hoffa. Lucky for the Teamsters. Without the iron hand of the federal government to bring order out of the imagined chaos of over-the-road trucking in the thirties, the Teamsters would probably be today what they were up until then: an important, respected trade union whose backbone and strength lay in local craft unions organized around specialized delivery drivers. Regulation of trucking by the ICC changed all of that. With rates uniformly set by the ICC and its rate bureaus, the Teamsters were presented with precisely the sort of "effective cartel apparatus" described by Professor Chrisman.

Jimmy Hoffa and other Teamster leaders had the foresight and ability to capitalize on the unwitting help the government was offering. During the forties and early fifties, Hoffa, through his position as negotiating chairman of the powerful Central States Drivers Council, organized virtually all over-the-road trucking companies in a 22-state area throughout the Midwest and South.

One of Hoffa's earliest mentors was Farrell Dobbs, a Trotskyist from Minneapolis who left the Teamsters in 1940 to lead the Socialist Workers Party. Dobbs was the founder of the Central States Drivers Council and a brilliant organizer. He was one of the first Teamsters to see the potential—despite the opposition of the union's president, James Tobin—of organizing over-the-road drivers. Dobbs combined his knowledge of the rigid route structures and terminals established by the ICC with the strategic use of then legal secondary boycotts to successfully organize highway drivers in the upper Midwest. After Dobbs left the Teamsters, Hoffa put his strategy to effective use during World War II and thereafter.

Government aid in the growth of Teamster power wasn't limited to the ICC. Early in 1941, the Trotskyist followers of Farrell Dobbs moved his old Minneapolis Local 544 out of the Teamsters and into the old Congress of Industrial Organizations (CIO). FDR obligingly waded into the interunion struggle that followed and, in June 1941, his Justice Department sought

and received indictments of the Local 544 leaders under a Civil War sedition act as well as the newly enacted Smith Act. The ACLU branded the indictments as politically motivated, a favor to "promote the interests" of James Tobin and the Teamsters in exchange for their unquestioning support of FDR's foreign and domestic policy. FDR's support for the Teamsters didn't stop with the use of criminal indictments for Teamster dissidents. When more than a hundred trucking companies refused to honor a wage increase imposed by the Teamsters through the War Labor Board, FDR ordered a government seizure of the offending companies.

Even with the ICC and other government help, however, it was not an easy road for the Teamsters to achieve nationwide control of over-the-road trucking. Tobin's successor as president, Dave Beck, was a pioneer in organizing highway drivers in the western states. When he was forced from office in disgrace in 1958 by the McClellan committee investigation, the Teamsters did not yet have a nationwide contract even though they had by then organized virtually all the highway drivers of the interstate trucking companies regulated by the ICC.

Jimmy Hoffa was determined to change that. He took over from Beck despite the opposition of the Eisenhower administration and promptly set out to achieve his dream. He ruthlessly centralized his own power in the Teamsters and then went after the employers. By 1961, he had persuaded almost all the trucking industry to agree in principle to a single nationwide contract, albeit with many regional and local amendments. By 1964, Hoffa had achieved his dream, the first National Master Freight Agreement, covering almost half a million Teamsters; the same agreement that 15 years later, at the hand of Frank Fitzsimmons, may spell the end of Jimmy Carter's timid, cosmetic antiinflation program.

Hoffa was aware of the vital role the ICC played in the Teamsters' success. He knew that on economic issues trucking companies were woefully weak bargainers because the ICC was always there to grant rate increases. His biographers, Ralph and Estelle James, report Hoffa's response to a question in 1962 about whether he anticipated a strike over a major negotiation: "Only if we need one to convince the ICC to grant a rate increase."

FRANK FITZSIMMONS AND the Teamsters don't fear Jimmy Carter. What they do fear is a concept—deregulation—and a name—Kennedy. Deregulation is politically popular now and for the last five years, Senator Edward Kennedy has been the most effective legislator in Washington working to dismantle the regulatory agencies. Jimmy Carter and Alfred Kahn may have received a lot of credit for airline deregulation but it was Kennedy who forced the issue back in 1975 with the ground-breaking hearings of his antitrust subcommittee and Kennedy who subsequently pressured Howard Cannon, chairman of

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the Senate Commerce Committee, into cosponsoring the airline deregulation bill that became law in 1978. Carter's most significant contribution to the entire airline deregulation process—apart from the unexpected performance of Alfred Kahn at the CAB—was to sign the bill.

From his new position as chairman of the powerful Senate Judiciary Committee Kennedy now works to deregulate the trucking industry, while Carter is timidly advancing a legislative strategy designed to placate Frank Fitzsimmons—deregulating railroads before trucking.

The Teamsters are neither appeased by Carter nor happy about the prospect of deregulation. Their power depends upon the ICC's trucking cartel and they know it. If competition reared its ugly head, if everybody who could afford a truck could go into business without ICC permission and take away trade from the big Teamster-organized trucking companies, if smaller nonunion companies could lower their rates without ICC approval, then a breakup of the cartel, and a decline in Teamster power, would result.

That is all in the future. It took four years to deregulate the airlines, and their political power does not begin to approach that held by the Teamsters and the trucking companies. For now, the Teamsters still have muscle and they will use it. It may take another strike, but they will thumb their nose at Carter and again will walk away after bargaining over the National Master Freight Agreement with a settlement in excess of 10 percent a year. Carter will swallow it and rejuggle the figures several times; flanked by Labor Secretary Ray Marshall and chief inflation fighter Alfred Kahn, he will solemnly thank Frank Fitzsimmons for staying within the administration's 7 percent guidelines, leaving us to recall that the same voice promised in 1976 never to lie to us.

Teamster power was not accumulated overnight and deregulation of trucking will not end that power overnight. But deregulation, if it comes, will bring back the rigor of competition, and Teamster power will be gradually and inevitably diminished. The irony of all this may well be that Ted Kennedy, through his efforts to deregulate the trucking industry, will do more to eliminate Teamster power than the combined efforts of both of his brothers and their antiracketeering crusades in the fifties and sixties.

DISPATCH

IRENE DISCHE & STEVE WEISSMAN

Assessing West German liberties

FRAGMENTS OF A WEHRmacht bullet still in his head, the old Yugoslav partisan Vladimir Dedijer fought to break through the obvious boredom of the Bonn press corps, as he read the final judgment of the Bertrand Russell Tribunal on Human Rights in West Germany.

Dedijer and the other members of the tribunal had just spent the first week of January in a snowbound suburban town hall near Cologne listening to testimony on the Federal Republic's alleged violations of basic civil liberties. They had come from nine different countries to act as "an independent organ of world opinion" in the spirit of the earlier Russell Tribunals on War Crimes in Vietnam and Repression in Latin America.

This tribunal put West Germany on trial for its overreaction to terrorism, and for what many critics have called "the new German McCarthyism." The tribunal members hoped to use their "moral authority," and some hard-hitting international publicity, to force the government of Chancellor Helmut Schmidt to change its wayward course.

An earlier session of the tribunal last spring had examined *Berufsverbot*, the widespread banning of suspected radicals from jobs in the public sector, and in the following months the ruling Social Democratic Party promised to reconsider the practice. Now, in January, the tribunal was holding a second session, this time to consider the growing power of the West German secret police, censorship, and the legal treatment of accused terrorists. A far cry from war crimes, perhaps. But the tribunal believed it important to highlight the more disturbing trends in the smugly authoritarian democracy.

Although the tribunal members learned little that was new, the verdict showed their concern. Guilty on all counts, West Germany was called to task for creating "a serious threat to human rights."

But who really cared? Certainly not the journalists at the press conference, who helped themselves to free drinks as Dedijer spoke. An international bund of liberal and socialist notables sounding off on old themes was hardly much to write about, except perhaps with irony. "A festive and polished get-together of a few private persons," concluded a conservative Dutch paper. "A shoveling of old snow," added the liberal German weekly *Der Spiegel*. "They might just as well have stayed at home."

Perhaps the reporters were right. But Chairman Dedijer soldiered on. A bear of a man whose peasant drive and determination have made him untouchable as a dissident in Tito's Yugoslavia, he clearly had the moral authority to carry on the libertarian tradition of the late Bertrand Russell. And now with the support of Noam Chomsky, and the ailing Jean-Paul Sartre, who sent letters of encouragement from Paris, Dedijer announced the formation of an international watchdog committee to monitor West Germany's continuing performance in its treatment of human rights. If the Russell Tribunal had finished its work, the new Russell Commission was just getting started.

IN NO WAY IS GERMANY A fascist state," explains the chairman of the tribunal's German Steering Committee, Professor Wolf-Dieter Naar. "But we are already slipping from liberal democracy into an authoritarian welfare state. And if we were to suffer a real crisis, especially in the economy, I really worry about what could happen."

Naar's fears are shared by many Europeans, especially now that the Germans are flexing their economic and political muscle and "the German model" of disciplined democracy is gaining favor in southern Europe and elsewhere.

But Naar has few backers at home, as reaction to the Russell Tribunal showed. It's lonely being a liberal in

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The orthodox Communist party expelled one member for testifying on German human rights abuses.

postterrorist Germany, wedged between the anticommunist paranoia of the majority and the who's zoo of the left. The middle ground is hard to hold, and credibility with those in power harder to win. So tenacious liberals are left to themselves, spending an awful lot of time at meetings and congresses, and now, tribunals, with nobody paying much heed.

From the start of discussions in 1976, the tribunal faced hostility from all parts of the German political spectrum. Many on the left condemned the entire enterprise as "bourgeois," while others showed up at every meeting of the support committees, pushing their own special interests from gay rights to the treatment of foreign workers. But the radicals' presence undermined the tribunal's liberal image, and in the end Professor Naar and his colleagues locked them out, an act hard to square with professions of liberal faith.

The orthodox Communist party (DKP) created problems of a different sort. Communists were among the chief victims of *Berufsverbot*, and the tribunal organizers badly wanted them to testify. But the party feared that the tribunal would extend its criticisms across the wall to violations of human rights in East Germany, and threatened to discipline members who cooperated in any way. One young woman braved the ban to testify that the *Berufsverbot* had denied her a job because she belonged to the Communist party, only to have the party expel her for her presence at the tribunal.

But the most formidable pressures came from the Bonn government, which did not take kindly to the idea of being put on trial—not by foreigners, and certainly not for any supposed violations of human rights. That was a charge to be hurled at the East, and was in any case a purely "internal matter," as the former chancellor and Nobel Prize winner Willy Brandt wrote in a stinging letter to the sponsoring Bertrand Russell Foundation.

The government dismissed the tribunal as a kangaroo court, and then guaranteed that it would look like one, by turning down repeated invitations to present witnesses of its own. Government spokesmen also tarred the tribunal with the terrorist brush. This was patently unfair. From the start Naar and the others had attacked the terrorist way, and had braved the scorn of the far left by appearing to side with the state.

But the smear stuck, especially since the tribunal formally announced its plans only days after members of the Baader-Meinhof gang kidnapped the industrialist Hans Martin Schleyer in late 1977. The timing was incredible. All Germany was seething with anger, as citizens pointed fingers at their neighbors and muttered about the *Sympathisantensumpf*—the swamp of liberals and socialists who supposedly gave the terrorists "spiritual support." The good German burghers could see little choice between the left-wing bombers and the liberal scholars—represented by professors like Naar, theologians like Pastor Neimöller (who had spent ten years in Nazi prisons), and Nobel laureate Heinrich Böll, all early backers of the Russell Tribunal.

The tribunal's only defense was "the moral authority" of its members. But too many of them were minor figures, like the worthy but little-known Elliott Taikeff, an Indian-rights lawyer from New York. A Labour MP and a Labour lord from Britain, a poet from Paris, a left-wing dissident from Hungary carried little weight in Germany. The guest witnesses, such as John Shattuck of the American Civil Liberties Union, were unfamiliar names. And the entire venture had to rest on the reputation of past tribunal president Jean-Paul Sartre and the legacy of Bertrand Russell.

Many of the jurors distracted the proceedings by airing their own pet grudges. The Hungarian worried about the evils of Eastern Europe, the British about racial minorities, and the French about last year's (galling) extradition of Baader-Meinhof lawyer Klaus Croissant from his left-bank flat in Paris. All of which turned the tribunal into a circus of diverse and only barely related concerns.

The witnesses were allowed to give long-winded speeches instead of presenting evidence; the jurors failed to ask the hard questions. And in the end, the tribunal's chaotic courtroom did not even make convincing political theater.

Ironically, the most convincing evidence had already been presented many months before. The Ministry of the Interior, alarmed that the show trial might prove persuasive, set out to disrupt it by denying visas to some of the international jurors and by infiltrating the meetings with secret police agents. The London *Guardian* exposed the plan, the tribunal published the secret document calling for the disruption, and the resulting scandal gave the first session added punch. But the government had learned its lesson. When the tribunal met for its second session, the government ignored it. No tension. No interest.

THE TRIBUNAL'S MOST ambitious task was its investigation of the growing power of West Germany's ubiquitous internal security service, the Federal Bureau for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*). The secret police who provide the "findings" to ban suspected left-wingers from jobs as teachers and bus drivers and hospital workers, the *Verfassungsschutz* sit at the center of the hidden government that runs so much of modern Germany. They tap the phones, read the mail, run the informers and provocateurs, and fill the flashy new computers full of "facts" on all those they suspect of having something less than the required "positive loyalty" to the German state. And all this in secret, without any effective control by the German parliament, and without any right by those spied upon to challenge what is said about them—despite the postwar promise that Germany would never raise another Gestapo.

The allies who created the *Verfassungsschutz* and other German security services wanted no part of any Nazi secret police, and carefully divided all the various police and intelligence jobs between the state and federal governments, and among a spooky array of specialized services, such as the Federal Bureau of Criminal Investigation,

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the Federal Border Police, and General Reinhard Gehlen's old *Bundesnachrichtendienst* (BND), the German CIA. This left the *Verfassungsschutz* as a rather tidy counterintelligence unit, something like Britain's MI-5, with the supposedly single-minded task of watching out for spies from the East.

Even the problem of old Nazis and SS veterans was handled with care, and under the directorship of the celebrated Dr. Otto John, an anti-Nazi who was a wartime British agent, the *Verfassungsschutz* became the one security service in West Germany that didn't look like a Munich beer hall reunion.

Now all that has changed. The old guard started their comeback in the 1950s, in the wake of the scandal following Dr. John's "defection" to East Germany and his even more mysterious "redefection" back to the West. And the separation of police powers was seriously threatened in the late 1960s, when the West Germans moved dramatically to centralize their entire police system. Bonn poured millions of marks into new weapons and interlocking computers and passed a closetful of antisubversive laws, many of them straight from the old Nazi law books. This all began well before Ulrike Meinhof set off her first bomb, although it has since been defended as a response to the terrorist threat.

The *Verfassungsschutz* quickly became the brains of the entire apparat—a secret intelligence service that actually defines and classifies who is and who is not "an enemy of the state." No longer simply spycatchers—in fact, they nearly let slip the celebrated East German spy Günter Guillaume—the *Verfassungsschutz* moved into the eerie realms of ideological policing, dealing not with crime but with attitudes, speech, and thought. Their power is enormous, and even if the formal *Berufsverbot* were to end tomorrow (which it won't), the *Verfassungsschutz* would still have their computer files and the continuing power to decide who needed to be watched.

With its vast computerized files, Germany's security police root out dissidents and "enemies of society."

Senator Joe McCarthy would have loved it. The power to define "social enemies" has taken the *Verfassungsschutz* into a never-never land beyond his wildest dreams, a world of forever rooting out those who give "psychological support" to terrorists or show any signs of "rejecting the political system" and "the social order." No sign of nonconformity seems too small, no area of private life too remote, no basic right too sacred. The *Verfassungsschutz* has become the eyes and ears of "the Basic Democratic Order," and in the words of the Russell Tribunal, "a substantial threat to freedom."

THE TRIBUNAL'S NEXT target—and perhaps the most challenging—was the increasing use of censorship. In the past years, the West Germans have added to their penal code a series of laws that explicitly punish political expression. One of the more ominous of these makes it a crime "to insult" the state and its symbols. The rationale is that "the democratic order" needs laws to preserve respect, and certain intellectuals argue that democracy's failure to preserve its good name was one of the main reasons the Nazis came to power. One law professor even wrote recently to the *Frankfurter Allgemeine Zeitung* blaming the fall of the Weimar Republic on its inability to defend itself against verbal vandalism, such as the common practice in the 1920s of calling the national colors "black, red, and egg-yolk." The professor warned against similar signs of disrespect today and called for ever greater vigilance. It would certainly be unfair to draw conclusions from such letters about the German sense of humor, but it wouldn't hurt to reflect on this obsessive respect for the state: a passion that flourished in the institutions of the Third Reich and is still alive and well in the present laws of censorship.

And what of "free speech"? Somehow the idea just doesn't ring in Bonn the way it might in Berkeley. Several laws forbid publishing or distributing —though not reading—anything that condones crime. The law exempts artistic expression. But who is to decide what is art? The courts. And sometimes they are not even asked. In an instance truly reminiscent of Weimar, two years ago a group of politicians from the conservative Christian Democratic Union (CDU) stormed into an exhibition of posters shouting that they were "politicopornography," and tore them from the walls.

This mood, so prevalent in West Germany today, also infects the reporting of news. The slanting of the news is everywhere. *INQUIRY* [June 26, 1978] has already told the story of how a West German court sentenced a Yugoslav "guest worker" to three

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months in prison for making a nasty remark about the murdered Hans Martin Schleyer. The crime: "insulting a dead man." The story appeared in very few German papers; when asked why, a reporter from the influential *Frankfurter Allgemeine Zeitung* explained that the story wasn't fit to print because "the defendant deserved what he got."

All told, however, the tribunal added little to the debate on censorship. It had more success exploring the abuses of West Germany's legal treatment of accused terrorists and other political defendants. Perhaps the most widely reported of all the alleged violations of civil liberties here, the rather blatant denials of due process still stir up enormous emotion, both within the country and throughout Western Europe. This became painfully clear when the tribunal heard evidence from some of West Germany's best-known and most notorious lawyers—the handful of advocates who have dared to provide a legal defense for Andreas Baader, Ulrike Meinhof, and others of the Red Army Faction.

As the lawyers told it, defending accused terrorists today is only slightly more pleasant than speaking up for Jews was in early Nazi days in Germany. The notion that even the most unpopular of citizens have the right to a proper defense is not widespread in the popular culture, and the lawyers who have defended the accused kidnappers, hijackers, and political murderers have themselves been vilified in the public mind and victimized by the courts. "I have defended homosexuals, thieves, and murderers and have never been accused of being a homosexual, thief, or murderer," explained lawyer Heinrich Hannover. "But when I defend 'a terrorist,' I am always accused of being some kind of anarchist-communist."

THE COURTS THEMSELVES interfere with the right of accused terrorists to have the lawyer of their choice, excluding those who appear to identify too closely with their client's interests. The lawyer is also subject to professional Honor Courts, which can censure him and even disbar him from practice. In defending his clients, the lawyer must work knowing that the *Verfassungsschutz* and others might be reading his mail, tapping his phone, bugging his conversations with his clients in prison, or even breaking into his office and confiscating defense files. Treated as a criminal suspect for even taking the case, before entering the courtroom or prison he is forced to submit to strip searches, including what one embarrassed translator described as a degrading search of "body cavities." The lawyer is also subject to a new "contact ban," which allows the government to prevent any communication with his client during "a terrorist crisis," and he must communicate with his client in prison through a thick glass partition.

The state, of course, insists these measures are needed to keep the suspect lawyers from actively helping their clients to commit further crimes, and there is evidence that a few of the lawyers have done exactly that. But many of the measures appear to be pure harassment, and the tribunal members condemned what they saw as clear violations of the rights of both defendant and counsel.

So the Russell Tribunal has finished, and the new Russell Commission, with many of the same members and the same limited hopes for success, has taken on the role of watchdog for German liberties. Few in Germany seem to care, and in any case the mood has already changed from the lynch-law mania that surrounded the Schleyer kidnapping in late 1977, to a quieter antiterrorism and what Professor Naar calls "a cool anticommunism." But the new court practices and the repressive laws are still on the books, the secret police stand ready, and no tribunal or commission seems likely to stop the West German state from continuing to defend the basic democratic order at the expense of basic civil liberties. ❑

Forthcoming in

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It's Alaska vs. the Feds

By Suzan Nightingale

THEY SAY YOU CAN'T get .222 shells in Fairbanks these days. Or .243s. In Anchorage, they're picketing the Federal Building with placards reading, "Cecil, kiss my pick" and "Peanuts cause brain damage." And in the bush village of Eagle, popularized by John McPhee's *Coming Into the Country*, the city council has passed a resolution saying, "We do not intend to obey the directives and regulations of the National Park Service."

Alaska, home of the bumper sticker that says, "We don't give a DAMN how they do it Outside," is up in arms—quite literally, in some cases. A small but significant number of Alaskans are threatening armed violence. A larger number are prepared—as some of them have already shown—to resort to civil disobedience.

The immediate cause of this furor is a little-known federal statute called the Antiquities Act of 1906, which President Carter invoked December 1. As a result of the Presidential action, 56 million acres of federally owned land in Alaska were transformed into 17 "national monuments," to be preserved as wilderness areas where economic development of all sorts would be prohibited, subsistence hunting drastically curtailed, and sport hunting for the most part prohibited.

Washington's attempt to force a land-use order on them has a lot of Alaskans, literally, up in arms.

Outside (as Alaskans refer to the Lower Forty-eight—or anywhere that isn't Alaska), Carter's action was applauded. With a stroke of his pen, Carter had doubled the area of the National Park system. Charles Clusen, executive director of the environmentalist Alaska Coalition, said Carter had replaced Theodore Roosevelt as "the greatest conservation president of all time." But in Alaska, million-dollar chills went through the state's economy as Alaskans saw an area roughly half the size of California, containing some of the best sport-hunting and mineral lands in the world, locked up forever.

Sport hunting was forbidden in areas that had previously yielded 60 percent of the sheep, 34 percent of the caribou, 26 percent of the moose, and 11 percent of the goats taken in the state, according to Fish and Wildlife officials.

Commercial trapping was allowed to continue through the current season only, and then will be discontinued. Initial reports incorrectly said subsistence hunting and trapping, which are allowed on the monuments, would be restricted along racial lines; this sent rural white residents into a near-panic about how they could continue to live in the bush.

And in the southeast, the Department of Agriculture cancelled U.S. Borax's special permit to build an 11.5-mile access road to its mining claim in the Misty Fiords area. Borax could continue its mining, the federal government said, but it would have to use helicopters to take bulk samples from its 876 mining claims in the roadless area.

Even more important to many Alaskans was the dramatic show of executive power from 4300 miles away, exercised in a way that seemed to mock the promises made to Alaska when statehood came 20 years ago. In Alaska,

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Carter's invocation of the Antiquities Act has come to represent executive arrogance and big brotherism at their worst.

TO UNDERSTAND what is at stake, it is necessary to have some notion of the sheer size of this massive, rugged land where Eskimos still hunt whales to survive. Spanning four time zones, the state of Alaska stretches from the frozen wastes north of the Arctic Circle to the rain forests and islands south of the Yukon. It includes 365 million acres (enough, sourdoughs will proudly tell you, to make Texas the third largest state if Alaska were divided in two), but of the sprawling expanse of tundra and forests, glaciers and mountains, less than one-half of one percent is in individual ownership.

When Alaska became a state in 1958, the federal government promised to transfer 104 million acres of its holdings to the state of Alaska. However, Washington has been slow in fulfilling this promise, and the state has been either unwilling or unable to make large-scale land distribution programs available. Indeed, last fall when voters across the Lower 48 were passing variations on Proposition 13, Alaskans approved their own version, the Bierne Homestead Initiative, that would give 40-acre parcels to qualifying residents. (The state's Supreme Court is expected to rule against that measure on constitutional grounds, but state legislators have gotten the message and are formulating another, more moderate land disposition program.)

So, although federal agencies such as the Park Service and the Bureau of Land Management oversee federal lands in Alaska, Carter's sweeping action—which followed by two weeks an

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executive action by Interior Secretary Cecil Andrus withdrawing 105 million acres for three years—brought the absentee landlord home. And to many land-hungry Alaskans, it was the last straw: Bad enough, they couldn't own the land; now they couldn't hunt, mine or trap on it, either. Black clouds of discontent formed immediately.

"We feel states' rights is the basic issue," says Clark Engle, an Anchorage-based master hunting guide who says he has been put out of business by the feds. "They've taken our rights away from us. . . . There is going to be a lot of violence if the federales try to kick [people] off the land. There will be violence unless something is done."

In an effort to see "something" done, Engle formed Alaskans United, one of a number of citizens' groups that sprang up after Carter's action. Together with a Fairbanks group called The REAL Alaska Coalition, they organized something called "The Great Denali-McKinley Trespass," billed as "a simple non-violent protest designed with the family in mind." Ads appeared in state papers that showed citizens saying, "I'm going!! to the Great Denali-McKinley Trespass to protest the Antiquities Act. Bus transportation available, $12 round trip—dog racing, snowmachine tours, picnics, black powder turkey shoot, cross-country skiing, snowshoeing, ptarmigan hunting, guided wolf hunts, archery contests, air show, silhouette match, trapping seminar and sunrise service." An effigy of "king George Carter" was featured at the turkey shoot.

As explained by REAL Alaska Coalition president Ken Fanning, the purpose of the trespass was fourfold:

—to stage a peaceful public demonstration showing Alaskans' determination to use and conserve public lands in the traditional manner;

—to see which of the new interim regulations the National Park Service intended to enforce;

—to show Alaskans are united in their opposition to the invocation of the Antiquities Act; and

—to prove a family outdoor experience.

Site of the protest was Cantwell, a town roughly the size of two football fields that borders the newly-proclaimed Denali Monument. A group of local residents called FORCE (Federally Oppressed Rural Citizens for Emancipation) cleared every available spot for parking, the cafes and bars stocked up in anticipation of record business, and the town waited for the onslaught of protesters. Trespass organizers were hoping for 4000.

The morning of January 13 dawned warmer than the 10 degrees predicted by the weatherman, and as the late morning winter sun rose, cars were already arriving from Anchorage, Fairbanks, and as far away as Homer on the Kenai Peninsula. Although the crowd, estimated at 1500, was smaller than the organizers had hoped for, spirits were high. And although most of the demonstrators were of the "I've never even had a parking ticket" variety, many expressed a willingness to be arrested if that was the only way to prove their point.

The march onto the monument began when Alaska's answer to Paul Revere arrived on horseback clad in colonial garb and shouting, "The turncoats are coming, the turncoats are coming—from Fort McKinley."

"They've taken our rights away from us..."

Engle, wearing white overalls with "monumental ranger" written on the back, and a hat with a tinfoil star, sold official trespass certificates. Lolita Valeq won the 6.5-mile sled dog race in 27 minutes and 42 seconds. The protesters built fires to keep warm, shot ptarmigan, drove their snowmachines, and generally made a day of trying to break the Park Service regulations.

Hunting guide Dan Rodey, brother of a state senator, told one reporter, "I am now unemployed. I'm going to join the food stamp program, federal assistance programs, and plan to apply for unemployment. You can pass that information on to the proper federal authorities."

A press conference was held at 11 A.M., publicity being one of the main ideas; organizers hoped to capture the nation's attention with the protest. ABC's Anchorage affiliate covered the event, but later learned that Chicago's historic blizzard bumped that footage off the network news.

No arrests were made—Park Service personnel had decided ahead of time to maintain a low profile unless real trouble started—and organizers went home happy. Even without the national publicity and the confrontation they had hoped for, the event demonstrated the willingness of a large number of Alaskans to resist enforcement of the Antiquities Act. It is also worth noting that a legislator from Fairbanks has introduced a bill that would create a $500,000 defense fund for Alaskans arrested for violating federal regulations on national monument grounds.

WHAT HAPPENS next is up to the courts and Congress. The 1906 statute was addressed to the preservation of historic and prehistoric ruins and monuments on the public lands of the U.S. The state of Alaska is suing the federal government on the ground that the Antiquities Act did not apply to undeveloped tracts of land where there are no "antiquities," and that Carter acted illegally in using it to create the new wilderness areas in Alaska. The final resolution of the Alaska lands issue, however, must come from Congress, where the problem began.

In 1969, after a decade of Alaskan statehood, Secretary of the Interior Stewart Udall froze state land selections until the land claims of Alaska Natives could be settled by Congress. In 1971, when the Alaska Native Claims Settlement Act was approved, the bill included the now familiar Sec.17(d)2—or d-2 as it is called—which gave rise to the Alaska lands issue. Under d-2 the secretary of the interior was empowered to set aside 80 million acres of federal land in Alaska for national parks, wildlife refuges, national forests, and wild and scenic rivers; congressional approval was also required. This provision was to expire in December 1978, but the 95th Congress had other ideas.

The session started a year ago with Representatives Morris Udall (D-Ariz.), brother of the former secretary of the interior, and John Seiberling (D-Ohio) introducing what was to become HR 39. Their proposal placed 144 million acres of Alaska in the wilderness sytem and created 114 million acres in new parkland, refuges, and wild and scenic rivers. By February, amendments to the measure were coming thick and fast. Alaska's Representative Don Young, working feverishly

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to leave as much of the state as possible open to economic development, said he felt like "a man watching his daughter being desired by 11 football players" as the House Interior subcommittee carved up the map of Alaska.

In May, HR 39 was passed by the House, by an overwhelming 277-to-31 vote. Meanwhile, in the upper chamber, both of Alaska's senators, Mike Gravel and Ted Stevens, knowing that time would run out on d-2 on December 18, were threatening to filibuster what they termed an "unacceptable" bill.

But the Carter administration had a plan of its own: On August 18, Senator Stevens called a press conference to warn that the administration had started researching the 1906 Antiquities Act. "If we don't get a bill," Stevens warned, "these areas are in fact going to be withdrawn." In fact, in September, Andrus assigned 42 persons to a special interagency task force to study the possible application of the act to Alaska. Even then, a number of those involved—including Gravel—refused to believe the administration would take executive action. Gravel called the threat "a bluff."

In October, the Senate Energy and Natural Resources Committee, preoccupied with energy legislation much of the session, finally turned to the Senate version of the bill; by then Congress was on the verge of adjournment.

On Wednesday, October 11, Stevens announced a major compromise he said would convert the committee's Alaska lands bill into "the best bill I think we will get." At this point, virtually all of the involved parties—the state, the legislatively-created d-2 Steering Council, the Carter administration, and even environmental and development lobbyists—favored a realistic compromise measure, so Gravel, backing off his filibuster threat, agreed to work on the compromise.

But by Saturday morning, October 14, negotiations had collapsed, with Gravel insisting that the compromise contained "totally unacceptable" provisions for access across the federal land to state land. Under threat of his filibuster, the harried Senate didn't even vote on the measure. Then, Gravel blocked a one-year extension of the Alaska Native Claims Settlement Act, which would have given Congress additional time to consider the matter. Congress adjourned, and four weeks later, Andrus withdrew 105 million acres for three years so it would be

"... There will be violence unless something is done."

"protected" from development or state land selections when the 10-year executive withdrawal expired. This included most of the 56 million acres later enshrined by the President. Andrus, invoking the Federal Land Policy and Management Act, called his move an "emergency" action, and said it was urged by Representative Udall. When asked what emergency had prompted him to urge such action, Udall replied, "The emergency is that December 18 is coming and unless some action is taken, irrevocable decicions will be made by people with bulldozers and picks and shovels and other equipment instead of being made by the country."

These remarks incensed many Alaskans, who demanded to know where all the bulldozers were. Udall later apologized for the statement, saying he had been caught up in the emotions of the moment, but the national image of a state that had to be protected from itself—and from big business—was established.

AND SO, WITH 56 million acres of its land in new national monuments and another 49 million withdrawn for three years, Alaska will be back in Congress this year, continuing on the 20-year quest for its statehood lands and seeking a permanent solution to the ever-changing lands picture in the 49th state. It's an uphill battle, pro-development factions say, because the state must convince Congress to reverse an executive action—never before done in the case of the Antiquities Act. And with 55 percent of the voters registered as independents, there is no easy consensus on d-2. Although opponents of the Antiquities Act are putting on the most vocal show, some residents are pleased with the wilderness status that it has brought to more than one-seventh of the area of the state. "The Antiquities Act the (Alaska) Coalition is very happy with," says coalition member and Anchorage resident Peg Tileston. "The boundaries drawn were pretty inclusive." Friends of the Earth member Ben Shane views lands legislation as "a tool" to be used in land planning. Referring to "the atmosphere of fear" in the bush, Shane says, "This fear bothers me because it divides Alaskans . . . based on lack of information and misinformation."

In fact, when congressional hearings were held around the state in 1977, sentiment was divided 50-50 on Udall's bill. Even the state's congressional delegation has often been divided on this issue. Republicans Young and Stevens support "compromise legislation" just to get out from under the Antiquities Act. Democrat Gravel had threatened to kill legislation because "you can't compromise with people who don't want to compromise; those environmentalists want it all." However, in mid-February Gravel reversed his position, deciding to cooperate with Stevens and Young in seeking a compromise.

Republican Governor Jay Hammond, himself a former guide, is at the helm of a divided and worried ship, and his major speeches these days all include emphatic calls for unity. But even those fall on some deaf ears.

The leader of the Alaska Independence Party, Joe Vogler, responded to Hammond's most recent plea by accusing him of "representing a very small group of Alaskans—elitists and environmentalists—people who don't want to have an industry here except for government." Vogler swears he will "fight to the death" against the "dastardly and arrogant deed" perpetuated by the Antiquities Act. Tileston and others who expect to see an Alaska lands bill pass Congress before hunting season gets underway in August, just smile when Vogler and his followers climb on their soapboxes.

Meanwhile, in Fairbanks, a 39-year-old father of three named Mike Hartman took leave without pay from his job to camp out in front of the post office with a sleeping bag, a cot and a chemical toilet—in five degree weather. "I'm going to live here until President Carter and Congress repeal that ridiculous law or until my feet and hands freeze and I keel over."

There are enough Mike Hartmans in Alaska to ensure that the federal government is not going to have its way in this case without a fight.

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The California Coastal Commission takes from the middle class and gives to the rich–and, in the end, creates an environmental nightmare.

A Case of Coastal Piracy

BY TOM HAZLETT

IN 1946, SHORTLY AFTER HIS RELEASE from a World War II internment camp for Japanese-Americans, Harvey Osui* bought several acres of inexpensive land in a sparsely settled country town north of Los Angeles. It was to become, as he had alertly anticipated, a fashionable residential resort. The Osui family grew flowers on the land, paid their taxes, and waited. Finally, in 1974, faced with a dizzy pre-Proposition 13 tax burden, the Osuis decided to cash in.

But a funny thing happened to Mr. Osui on his way to the bank. He ran into the California Coastal Commission. The commission held public hearings on whether to issue a building permit for his acreage, a permit he needed before selling if he was to recover the full market value of his 30-year investment. The land was choice property, next door to the town's civic center and about a mile from the beach.

The Coastal Commission hearings dragged on into 1975, 1976, 1977. Residents of a coastal hillside overlooking Osui's land showed up in force at every hearing, to denounce any further despoliation of the area's magnificence. They were led into battle by a civic-minded doctor, a long-time resident who had leveled the top of an entire hill to construct his massive stone castle in the 1940s. Now, however, he was determined to preserve what was left of nature's bounty. In fact, local residents reported that his environmental concerns led him to seek government action to force the Osui family to grow geraniums, instead of baby's breath, because the geraniums made a more pleasing view from his castle.

In late 1977 the Osui family, discouraged by bureaucratic foot-dragging, sold their interest in the property to a large development company for about one-fourth of what it would have been worth with the building permit.

Welcome to the California Coastal Commission.

The California Coastal Commission provides a classic demonstration of what happens when romanticism meets reality. The commission was born in 1972 of the innocent zeal and devotion to nature embodied in Proposition 20, a measure on the state ballot that promised "to preserve, protect, and where possible, to restore the resources of the coastal zone for the enjoyment of the current and succeeding generations."

As poetry, Proposition 20 was moving; as law it was heroically vague. Without addressing such details as costs, how to compensate for expropriation, or protection of individual rights, Proposition 20 mandated that a temporary Coastal Commission—with six regional commissions and one state commission, each having 12 members—be established to issue permits for all coastal zone development for three years, at which time the commission would submit a permanent "plan" to the legislature. In essence, the voters had approved not a law but a *plan*. What was the plan? Just "a blank check for bureaucracy," in the retrospective words of former Coastal Commissioner and Proposition 20 supporter Carmen Warshaw.

Proposition 20 paved the way for the California Coastal Act of 1976, a formidable law that generously extended the powers of the commission over land as much as five miles inland from the coast. The description of how these new powers were to be exercised was an exercise in vacuousness. The reason for that formulation was not hard to fathom, as M. Bruce Johnson, an economist at U.C. Santa Barbara, notes: "A detailed plan—either final results or criteria—would make it possible to identify the injured parties among the voters and would crystallize opposition to the facts and philosophy of the Coastal Plan. These costs would more than offset any benefits that would accrue to the Coastal Commission because they tipped their hand. Consequently, the Plan is general rather than specific, clichés rather than criteria, and utopian rather than realistic." What else could Professor Johnson conclude from a legal document that offered such pearls of wisdom as "the coast should be treated not as ordinary real estate but as a unique place. . . . Coastal resources are limited. . . . Ocean beaches depend on sand. . . . Clean air is a coastal resource . . . meeting human needs while safeguarding the coast requires special measures."

**The names have been changed to protect the family from possible retaliation by the Coastal Commission. As Jack Starlin, a structural design engineer who has dealt with the commission on several applications, observes, "They're vindictive as hell."*

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Coastal decrees sent home prices skyrocketing.

IN ITS SIX YEARS OF OPERATION, THE commission's greatest impact has been to encourage the skyrocketing of the price of housing in the coastal zone. Its restrictive land use policies are pricing thousands of middle-class families out of the market. Consider the plight of several hundred prospective homeowners who, in recent years, purchased one-fifth acre lots in five Malibu subdivisions, none of them on the beach, for $20,000 to $25,000 each. Many of the families intended to cut construction costs by doing much of the work themselves and most expected to be able to move into new Malibu homes for a total of $90,000 to $110,000. But a ruling in late 1978—totally unexpected—has established a one-acre minimum for home building in the subdivisions. Those who bought the small lots hoping to scrape together enough for a dream house have bought themselves a nightmare instead. One-acre parcels are selling for far more than $100,000—although the smaller lots that had been selling for $25,000 in October are now, with no potential for homebuilding, selling for $10,000. And the least expensive price for a family home already built is about $185,000, and rising fast because of such regulations.

Rising housing costs pose a legal as well as an economic problem for the Coastal Commission, for the 1976 Coastal Act specifically directs that "housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided." Yet, as the regulatory costs imposed by the commission fall thunderously on persons without great means, the Coastal Act of 1976 has shown its true colors and earned opprobrium for being "elitist." Commission members fall back on the defense that, as their lobbyist Peter Douglas put it, "You would have to be wealthy to live along the coast anyway, with or without the commission."

Looking at the Coastal Commission's permit-approval process case by case may be the only way to fully appreciate the capriciousness of its machinations. So let's examine four typical cases, taken from one day's proceedings (January 8, 1979), that illustrate the vagaries and inconsistencies of commission behavior.

Case One: A man in his early thirties had already appeared three times before the South Coast Regional Commission (covering Los Angeles and Orange counties), each time losing a day of work. He had acquired a piece of land in the town of Laguna Beach to build a home for his family. The property was not on the beach. Other homes stood on adjoining properties. His permit to build the home was delayed on four counts:

1. No park was close by;
2. It would take a fire truck too long to reach his property;
3. His plans conflicted with the Local Coastal Plan for the City of Laguna Beach; and
4. He needed a geological survey.

The landowner hoped to reach a compromise with the commission: If they would drop the first three objections, he would get *another* geological survey. (Applicants must have all local permits and final blueprints before even being considered by the Coastal Commission and he had already been cleared by the county on his first such survey.) He had already invested $5,000 in preparation for his house and because he could spare only another $500 to $1,000 prior to actual construction, he needed some assurances on the first three objections before spending any more to redeem himself on the fourth.

1. Was he too far from a recreational park? One might marvel at the altruistic concern of the commission: How thoughtful to deny the man a home because he might not be able to find a place to play. The applicant did point out, however, that a park was approximately eight minutes walking distance from his door.

2. Was he too far from a fire station? The endangered site was all of half a mile from the closest fire station. During peak rush-hour traffic, a two-minute response would be the best he could hope for. Average urban fire response time, one commissioner remembered, is five minutes.

3. Was he in "conformance"—a popular commission term—with the Local Coastal Plan? Here was a real curve ball, because there was no Local Coastal Plan. The City of Laguna Beach expected to have one within a couple of years, however. The applicant had endeavored to show that his lone single-family dwelling, to be built far from the Pacific and in an existing neighborhood, would not conflict with whatever plans came into being. The local commission dismissed his petition, saying—shades of catch-22—that since no one knew what those plans would finally look like, it was impossible to say whether or not he would be in conflict with them, although one of the twelve commissioners did observe that by this criterion literally all development in the city (or any other city without a plan) would have to be stopped.

To assist the commission in making decisions, the public is always invited to comment on permit applications. One man did so on this occasion: He was a retired army colonel who had purchased the house next door in 1951. He dramatically predicted fire disasters, flood problems, and irritating traffic congestion. One commissioner observed that living under such conditions ever since 1951 must have been dreadful. It was, admittedly, hard to miss the real purpose of the colonel's public-spirited visit. But the commission was not unmoved by it. They upheld the protest and denied the applicant a tentative permit. The specific reason was not stated.

Case Two: The San Clemente Evangelical Free Church proposed to make into a school two large mobile homes on property it owned at the base of a private dead-end road. There was a considerable fuss over the project, and about 25 well-dressed residents of neighboring Seascape Village came to the commission to protest.

The Seascape representatives stressed that all 301 Village homeowners had paid a big chunk of money for their homes—they were quite adamant on this point, and from the looks of them it was certainly believable. They were alarmed at the prospect of having children bounding to within 150 feet of their "living room windows." The school had already agreed to be legally responsible for planting large trees to reduce noise and hide unsightly scenes of children playing, but this information was not volunteered and came out only after much prodding. (The church's representative seemed disoriented and overwhelmed throughout the proceedings.) The protesters asked the commission to prohibit the school project, primarily on the basis that the

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private road leading to the school was already congested and would become unsafe. (This was the *Coastal* Commission, remember.) The eight commissioners present (one was absent and three were in the lounge having coffee) appeared confused by the intricate topographical maps that only some of them professed to comprehend. None claimed to have ever seen the property in question.

After much conflicting testimony from the Seascape residents as to the dimensions of the road and road-related hazards, the commission finally learned that the road led only to the church and to homes not even in Seascape Village. Having neglected to mention this minor detail, the villagers' professed concern for the safety of others now looked dubious. The permit was approved.

Case Three: A man in his late twenties had recently purchased a duplex several miles from the ocean but under the commission's jurisdiction. Indeed, had he desired to plant trees or to relandscape his little parcel, he would have needed a permit. But he wanted only to change his units from rentals to condominiums. Even though this legal transaction entailed no physical change in the environment, it too required commission approval.

When filing his application to the commission, the owner had erroneously listed the rental value of the units at $400 per month. The hearing was scheduled to hear his argument that the rental values were actually $475 and $650; if the rents were only $400, his building would be classified as "low to moderate income housing" and commission policy would not allow such units to be "taken" from the rental market. This was how the commission interpreted its mandate to encourage the low- and moderate-income housing market. After cautious pronouncements and nervous responses to interrogation, the applicant succeeded in convincing the commission that his property qualified as "upper income housing," and he was awarded the right to convert it to condominiums.

The message conveyed to developers by this policy was anything but subtle: to ensure your property rights, including the right to convert apartments from rentals to condominiums, don't build or own low- or moderately-priced apartment units. Not a word was spoken by any commissioner about what this does to the mandate regarding housing opportunities for persons of low and moderate income. When this was raised with the staff's executive director he seemed to regard it as a logical criticism but not really worth worrying about.

Case Four: A developer needed approval for a tourists' shopping center and for the final forty single-family homes of his project. The developer was represented by an able spokesman who did little more than stress his firm's eagerness to dedicate both a park and a beach to the local community, which would be done just as soon as it received the necessary Coastal Commission permits to finish its other work.

The commission's own executive director spoke up promptly. He seemed to know the story backwards and in the dark. He urged that no further delays be tolerated; that a definite decision be made this very day. His own "expert" opinion was to proceed at once.

The size of the project seemed to cast its own shadows, however. The hearings droned on, with commissioners treated to large, glossy full-color blowups of the building sites—and parks—under consideration. The graphics must have been refreshing after the shabby homemade efforts that had been inflicted on them by the previous applicants.

Rival neighbors slug it out at the permit hearings.

The stalemate finally dissolved when the developer himself, something of a Mr. Big in community affairs, came forth to clarify some finer points. He needed no introduction. The permit was approved without further delay.

OBSERVING ACTUAL HEARINGS, AS opposed to reading press releases, reveals that the effort to end "continued, unthinking, haphazard growth" has resulted in little more than a public arena for slugfests by rival property owners. The fellow who has already made great sacrifices to move up in the world can't stomach the notion of having that vacant lot next door "taken" from his little paradise. Where is he to commune with nature? Where is his dog to roam or find relief? Where is his kid to play ball? Perhaps more to the point, the established homeowner knows that a building freeze will increase his property values.

Before the commissioners, of course, "Three cheers for monopoly rent!" comes out sounding like "environmental concern." But no one wants to pay the price. Did the 301 wealthy Seascape Villagers value their insulation from little brats enough to buy the church's property? When they moved into their expensive solitude did they pay a price that guaranteed that the neighborhood would never change? Far cheaper to urge the Coastal Commission to force owners off their land. No wonder 25 important people made their appearance in battle regalia. The price was right! Private covenants, which legitimately restrict development and growth in thousands of communities—including Seascape Village itself—are available for purchase. But to keep the land vacant would have cost somebody something. Had the permit been denied, it would have cost the church, quite literally, a whole lot.

If the church had lost the right to build it would have suffered an immediate, dramatic financial loss as the value of the property fell. And the adjacent Villagers would have profited—by whatever the difference between the market value of living next to "open space" and that of having "little monsters" next door might be. A similar shift in values occurred in Case One, when the colonel gained the value of adjoining vacant land and the applicant lost the value of the right to build a house—without, of course, any shift in the burden of taxes, interest, or insurance. His land would not even have much market value as "open space," since the commission's building ban obviates any need to own the parcel in order to keep it undeveloped.

In the time allotted for public comment at the hearings, the commissioners were asked whether they took such "windfalls and wipeouts" into account. Commissioner Ruth Galanter replied: "We do not consider it our business to uphold speculators."

Her answer was remarkable. Apparently she failed to appreciate the impact of her decision. The Coastal Commission does not affect any "speculative" landowner in isolation; it does not create or destroy wealth; it transfers wealth. That is to say, by taking away A's right to build a

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house, B next door gains a scarce resource known as "open space." Where A suffers a loss of wealth, B and his neighbors enjoy a wealth *gain*. Did Galanter not see that to decide against one "speculator" is to decide in favor of another?

The commission has thus generated a class conflict, with the state imposing powerful sanctions that favor, to the detriment of newcomers, those who have already made it to the fabled California coast. Since no one needs a permit to remain in the coastal zone, the economic result is massive transfers of wealth from poor to rich, relatively speaking. As Professor Johnson, himself a former commissioner

New regulations freeze the poor out of the coast.

in the South Central Region, comments: "The motives for using political exigencies, such as reducing zoning density, withholding utilities, and declaring building moratoriums are never altogether clear, but the results are: windfall gains for existing resident property owners, higher housing costs and the exclusion of lower income segments of the population."

Commissioner Galanter might have been chagrined to learn that this war against speculators had led to enriching the well-heeled, a consequence so predictable that in 1973, the commission's first year, Phil Watson of Los Angeles and several tax assessors of other coastal counties reduced the assessed valuation of undeveloped lands across-the-board, while increasing the valuation of those already built upon.

In his paper, "Some Income Distributive Consequences of the California Coastal Plan," Professor Daniel Orr of Virginia Polytechnic Institute follows the premise to its bitter end:

> Overall, the Coastal Plan is a document reflecting the dominance of upper middle class values and concerns. We must preserve the natural environment to provide pleasant vacation surroundings for ourselves, our children, and future generations. We must not disturb the Marbled Godwits or their forage to provide—horrors! —a cheaper source of electricity. Above all, we mustn't acknowledge the legitimacy of concerns regarding the continuing availability of better housing to which persons of all incomes can aspire.
>
> To the low income residents of Watts or East Los Angeles, the chief environmental concern is their immediate surroundings. How good a home can they afford to occupy? In how pleasant and convenient a neighborhood? Can they look forward to upward progress if they are industrious and thrifty? Only if these questions are affirmatively answered do the recreational, historical, agricultural, preservational, and touristic concerns which permeate the Coastal Plan begin to make sense to those people. If collectively we expend resources heavily in response to the second set of concerns, in a way that impedes success with the first, we are guilty of using the political process to advance the welfare of an elite, at the expense of those least well off.

Still, Galanter's perspective is far from unique; she may be among the most honest and intelligent of the commissioners. The charge about "speculators" is a red herring, a venerable tactic used by the commission and its staff to dismiss any reference to the momentous economic impact of its cavalier reassignments of property rights. Even the statewide body employs not a single economist and has not commissioned a single study of its effects—not even a shallow, self-serving one. As one commission staffer sees it, "the burden of proof is on the accuser" to show the impact of the commission. The coastal commissars remain smugly convinced that millions of Californians of all income groups benefit from the very existence of the group. One commissioner, Naomi Schwartz, claims that "the Coastal Commission has done more than any other local agency to promote low and middle income housing . . . to assure that the Coast does not become a place where only rich people can afford to live." This claim rests on commission decisions requiring developers to construct government-approved low-income housing in order to gain permits for their more lucrative projects.

On the other hand, Schwartz concedes, "We are aware that when you increase regulation you increase the cost." Then the question becomes, of course, what is the *net* effect of these countervailing forces on low- and middle-income persons. The answer requires some systematic survey or analysis. One such statistical analysis was done by H. Frech and Ronald Lafferty of the University of California at Santa Barbara. They found commission regulations seriously hurt the middle class in terms of housing opportunities on and near the coast. Schwartz dismissed the study, which she had not seen, as the work of "undergraduates"—Frech is on the faculty and Lafferty is a graduate student—and confidently recommended an attorney on the state commission staff who could provide "numerous economic studies" defending Coastal Commission policies.

That man was Peter Douglas, and the extent of his knowledge was revealed by his initial response: "No, I don't know of any studies that have been done." But, he volunteered, "I know of particular examples where applying for a permit hasn't cost a family anything outside of the permit fee." Contrary to Douglas's astigmatic perception, the cost of housing near the coast is being driven sky-high, not by the permit process so much as by the great risk associated with any application and the diminution of supply caused by "downzoning"—like rulings that allow only one house to be built where five could go before. With large land areas precluded from any development and huge uncertainties created about the assignment of future property rights, much less housing is attempted and much less buildable land is available than would otherwise be the case. It is this bureaucratically induced contraction of resources that has sent prices soaring and has chased the middle class out the back door. Nevertheless, Douglas insists, "We've definitely improved the opportunities for poor people to live in the Coastal Zone. . . . I can't tell you how many units we've been responsible for along the Coast."

I can. Six hundred units of low and moderate income housing have been built under commission pressures since 1976, according to state commissioner Don Neuwirth. He also thinks there may have been a few hundred such units built between 1973 and 1976.

That might mean one thousand lower and middle income families on the Coast. Very impressive. Particularly when you recall the Malibu one-acre rule that with just one stroke of the pen put 500 owners of one-fifth to one-half acre lots out of the housing market in one single community.

As Professor Bernard Siegan, an acknowledged land use expert at the University of San Diego Law School, comments: "These things are designed by lawyers. They throw the poor a bone so that the courts can't find that they're discriminating. They might require 20 or 30 units for low and moderate income housing while stopping 1000 units somewhere else."

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A REALISTIC ANALYSIS OF COMMISsion practices would revolve around the easily supportable notion that the bigger interests have major advantages in pushing their cases before the commission. Take, for example, the case of Hermosa Beach fireman Alan Hill, who went for broke on 7500 square feet of buildable land in the Malibu hills. After the regional Coastal Commission gave its initial permit approval, neighboring "ecologists" convinced the state commission on appeal that the Hill family really needed 20,000 square feet, with the additional acreage to be dedicated as "open space." That finished Mr. Hill. He had to abandon his plans.

But what happens when the Irvine Company, a huge development firm, puts 14,000 units on the map? They dedicate parks, beaches, greenbelts, and "open space." No problem with disgruntled neighbors, of course, because if you're putting in 14,000 houses you can afford to buy so much land there won't be any neighbors. Problems with the commission? For 14,000 units your architects, engineers, and geologists can spend a lot of time explaining everything to the staff, and they can even work out any problems that arise.

The key is this: When purchasing the legal, environmental, design, and land-use experts to testify on your behalf, does it cost the Irvine Company 14,000 times what it cost the individual? Of course not. More important still, in dedicating "open space" or "public access" in exchange for building permits, will the Irvine Company be putting up 70 percent of its assets as the ante? So many units can spread the costs of a dandy park or two pretty thin, particularly when the enhanced selling prices of the homes are put back into the developer's wallet. But the "dedication" sweetener puts Alan Hill right out of the ball game.

That is why it is less than surprising to find support for the commission among large firms or particular developers who have already become adept at playing the game. One such contractor routinely gained approval for construction of a duplex before the South Coast Regional Commission. His client, a businessman, had previously attempted to push the request on his own. His permit was denied. "I didn't know the lingo, the buzzwords," he confessed afterwards, "So I had to get somebody who did." His contractor's experience with the commission wins him many such coastal zone clients.

For those without the connections (unlike that law partner of former Governor Edmund G. Brown, Sr., who is said to have a perfect track record before the commission), successes are few and far between. Santa Monica structural engineer Jack Starlin refuses to deal with coastal zone clients until after they have obtained their commission permits. He would rather turn down business than deal with the "crazy" regulatory process. Paul Balalis, a Newport Beach contractor who deals mostly with one- to four-unit jobs, says that the larger development firms pay people to regularly monitor the commission hearings and to "see when the balance of power changes"—a huge advantage, since the personnel on the commission change constantly, as do the criteria for permits, and a request that is turned down one week may well be approved the next. The problem, again, is that to pay commission-watchers might be profitable for a 100-unit developer, not for the individual planning one home. Balalis shrugs, "Today it has totally become a rich man's game."

An inside confirmation of this view comes from Carmen Warshaw. Prior to her 1973 Coastal Commission appointment by Assembly Speaker Bob Moretti, she was well known as a longtime Democratic party activist and a member of the State Social Welfare Commission and the Fair Employment Practices Commission. Today she is more than happy to blow the whistle on the excesses observed during her last political tour of duty on the Coastal Commission:

> While they may claim that they were fighting business or private interests, everything was planned to keep things as they are or to downgrade them. Well, by downgrading them what we did was to create less opportunity for people to live by the beach. If you wanted to build a four-unit apartment you were downgraded to a two unit. So what happened? It made the price higher, it hurt the person building *and* it hurt the people who wanted to live at the beach. We took land from people, asking for all kinds of beachfront access without any compensation, and we wanted it in places where nobody could park so they (the public) couldn't walk there anyway. I mean there were so many unreasonable things that were just incredible. . . . In fact, I remember one case in which the Commission wouldn't let the woman rebuild her sea wall and her house was destroyed. Nobody ever publicized this. You couldn't get it out.

Warshaw said she couldn't remember the lady's name "because after a while everyone referred to her as the 'crazy woman'—because after a while she was so hysterical. She became crazy. Literally."

There was another applicant whose name Ms. Warshaw was able to remember. Anis Stephens was

> a modern artist who had a lot which was 43 feet wide and to let her build a house they wanted her to give nine feet vertical access [meaning a pathway from the front on the street to the rear nine feet wide]. But this was a woman who was interested in the environment and she had had an architect draw her a house which had a windmill to generate power, and solar panels for heating and hot water. It was a very cleverly designed house. And they destroyed the design because they wanted the access. Which was ridiculous because there's no parking there. . . . These people are insane.

This sordid tale raises the issue of "environmentalism." It cannot be denied that the commissioners know more about ecology than they do about economics. Yet, they have yet to produce anything close to a systematic assessment of the environmental impact of their actions. One staffer, when asked for such an assessment, responded brusquely, "That's the public's job to determine." This reply ignores

The commission keeps the haves in their place.

the fact that even if the public did invest great energies in determining the environmental impact of commission policies there would be only convoluted channels available for political redress. Commissioners are unelected: Moreover, they are appointed by such a strange array of public officeholders (the Senate Rules Committee, the Governor, County Supervisors, City Councilmen, etc.) that they are virtually immune from direct political pressures.

The commission boasts that it has cleaned up coastal waters (which was already happening under the Water Quality Boards when the commission came into being), reduced overall development in the coastal zone, and squeezed ongoing development into already established

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communities. The first claim is untestable, the second (as soaring house prices attest) is undeniable, and the third is interesting enough to deserve a closer look.

The purpose of reducing "sprawl" is, according to the commission, to relieve pressure on public services such as roads, sewage disposal, schools, and utilities. The commission's claim is not unreasonable: Creating many new developments does increase congestion and strain public services. However, the solution imposed by the commission, to eliminate all development in particular areas, is arbitrary and extortionate. Developers who want to build new projects should and can be confronted with the true social costs of such projects, and should not be allowed to push those costs onto the public. User fees and service charges, already imposed in many communities across the country, are designed to prevent exactly this type of free ride on tax-funded services.

Incoming residents do create burdens in any community, coastal or otherwise. They should be expected to pay for improving and expanding roads, watershed, fire protection, schools, and all other public facilities they use. The obvious solution, then, is to hand them the bill. Then they can decide whether the cost is worth it. But the commissioners have usurped this choice making. They decree how much housing can go where, depending upon *their* tastes and preferences. For example, commission staff member Roy Gorman says that in Malibu there "is a limited capacity to absorb new development. No one knows the exact limit, but it's not much more than the current population." The current freeze on "permits for less than one acre [will last] until we're sure it wouldn't have adverse impacts."

And the commission goal, as elucidated by Gorman, is that "small lots shouldn't use up all the capacity. Development should be on the better lots." Those "better lots" are, coincidentally, the more *expensive* lots. According to Gorman, however, that is simply "inevitable. The price is going to go up no matter what we do." And he retreats to the same corner with the rest of his colleagues.

THE ARBITRARY NATURE OF THE commission's commitment to environmentalism is nowhere more clear than in its relentless attacks on those who actually *do* protect natural resources where they live. Take the Hollister Ranch case, still pending.

Hollister Ranch is, one would think, an environmentalist's dream. It consists of 135 hundred-acre parcels in a picturesque coastal setting a few miles north of Santa Barbara. Public services within the Ranch, including roads, are privately owned and operated by the homeowners who have formed an association to govern all commonly owned resources and to regulate land use within the development. Adherence to the association's present and future rules is a legal prerequisite for buying into the Ranch, and is included in the terms of sale.

Private covenants, under the jurisdiction of the homeowners' association, bar more than three houses on any hundred-acre parcel; most permit only one. All commercial, industrial, apartment, or condominium buildings are expressly prohibited.

The association periodically contracts with scientific survey teams to conduct flora and fauna inventories that guide uses of the immediate environment. Bird sanctuaries, duck ponds, cattle-grazing areas (all but six members belong to the cattle co-op), and even exotic flowers imported from South America are paid for out of association dues, to enrich the natural habitat.

Enforcement of this arrangement is strict. John Fling, a Hollister Ranch director (and, of course, homeowner), states that, when somebody was caught cutting down a 30-inch diameter oak (no tree over six feet can be cut without approval), "he was forced to plant and maintain until self-sustaining 10 Live Oaks, or he would have faced a $5,000 fine which would have become an automatic lien on his property."

When the government fines someone for duck hunting, notes Mr. Fling, "they just fine him, they don't put any more ducks in. We have a design committee that uses expert studies to assess the damage. We are a game and wildlife preserve with extensive covenants that have teeth in them."

But Mr. Fling, who gathered signatures for Proposition 20 in 1972, has a problem. "Private stewardship has been good in this state," he argues. "We should encourage it. But the Coastal Commission is killing it. They're using this public access issue."

In Hollister Ranch, public access means that the private roads would be opened to one and all. So much for enforcement of the design committee's judgments; one can imagine the chances of prosecuting a weekend hiker for crushing a rare flower. Moreover, in addition to public access through private property to the coast, the commission insists upon "lateral access," meaning the provision of a pathway all along the coast. Now Californians have always had the right, guaranteed by the state constitution, to walk along the dry beach even at high tide. But the coastline at Hollister Ranch is rugged; majestic cliffs block passage on foot. Hollister Ranch residents must have counted on this natural privacy when they invested so much in preserving their natural surroundings. Yet although the Ranch has been praised by many academic research teams as a "model" for this endeavor, the commission is demanding that, in exchange for permits needed to build the remaining homes, the obstructing cliffs somehow be "fitted" for pedestrian traffic.

One commission planner, Madge Strong, described the ultimate aim as to keep private developers from building on "every square inch" of the California coastline. If the private market is so rapacious about coastal resources, how may we explain the Hollister Ranch phenomenon, or the Del Monte Properties' world-famous 17-Mile Drive? In an entirely private community, the splendors of the breathtaking Monterey peninsula have been preserved, protected, and made accessible to literally millions of visitors for decades.

Any analysis of commission directives must finally encompass both the harms done the natural order, and those inflicted on the social order. When the rhetoric is deflated and the facts come into focus there is no doubt that the "haves," once again, are reaping the benefits of the elitist impulse toward what Michael Harrington calls "the status quo economy."

Proponents still defend the Coastal Commission as an environmentalist's dream, but for thousands of property owners and aspiring home buyers, it has become a bureaucratic nightmare. For citizens concerned about the human element within the ecosystem it is a cabinet of horrors. The discrimination of state interventionism against the poor, the proliferation of red tape, and the misallocation of valuable natural resources have rarely been more vividly illustrated. ❑

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AMERICA IN VIETNAM, by Guenther Lewy. Oxford University Press, 540 pp., $19.95.

Operation Whitewash

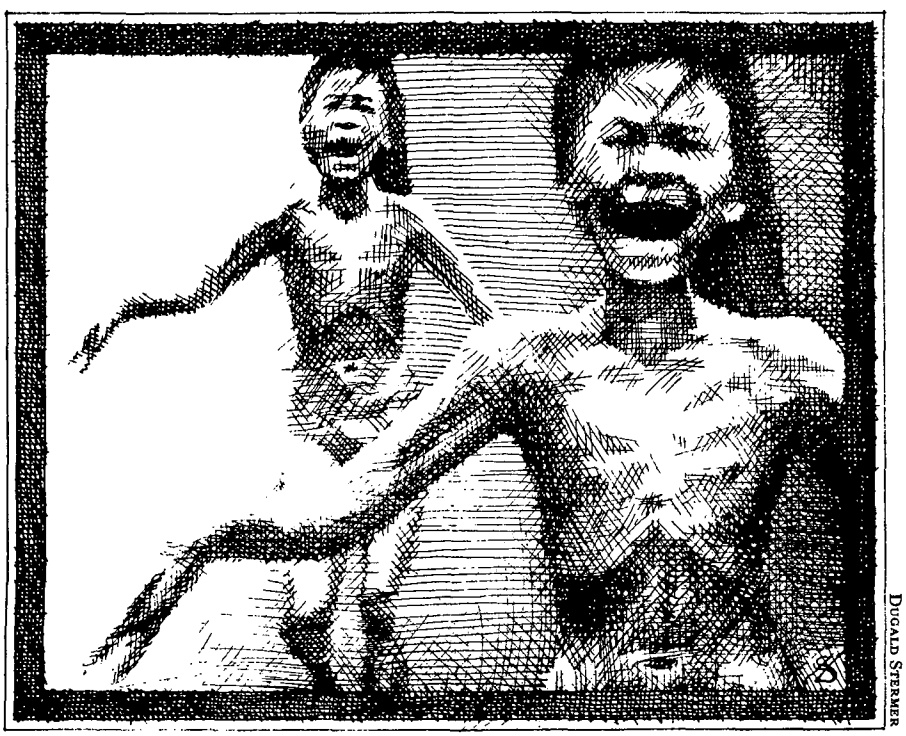
NOAM CHOMSKY & EDWARD S. HERMAN

A LONGTIME DEFENDER OF U.S. intervention in Vietnam, Guenther Lewy is concerned, as he puts it in the preface to this book, about "the impairment of national pride and self-confidence that has beset this country since the fall of Vietnam." The "reasoned conclusion" of his study, according to him, is "that the sense of guilt created by the Vietnam war in the minds of many Americans is not warranted." Despite the evidently apologetic function of his book, however, Lewy claims to be bringing "light, rather than heat" to an experience that is "more complex than ideologues on either side" would allow. He also asserts that his portrayal of the war is "novel and occasionally startling in both fact and significance."

America in Vietnam rests, however, on a foundation of unexamined chauvinist premises that could be used to rationalize virtually any form of aggression and violence, and its scholarly façade crumbles at almost random scrutiny. The only novelty in Lewy's book is that it combines in a single volume a review of factual materials that have been presented by others in condemnation of the war, with the standard conclusions of state propaganda. In order to achieve this marriage, Lewy is compelled to misuse and misrepresent documentary material, ignore critical evidence, and descend to a "startling" moral low.

Lewy had access to extensive new documentation from U.S. government sources. What he has culled from it is by and large insignificant, although occasionally he provides new evidence of some interest. To cite one example: Lewy reports a military analysis of "air operations in the populated Delta area" as early as January 1963, involving "indiscriminate killing" that "took a heavy toll of essentially innocent men, women and children." Elsewhere he notes that "during the year 1962 American planes flew 2,048 attack sorties" and that villages in "open zones" were "subjected to *random bombardment* by artillery and aircraft so as to *drive the inhabitants into the safety of the strategic hamlets*" (emphasis added). A serious historian would ask how this early and extensive U.S. assault on the rural population of South Vietnam bears on the question of the legitimacy of the U.S. presence and the real source of aggression. But these are issues Lewy never raises. His only comment in this case is that the "indiscriminate killing" was "counterproductive."

Lewy's concept of "innocence" deserves careful attention. He comments on the "difficult question" of determining who should be considered "innocent" when villages were destroyed by napalm and "the lavish use of American firepower." He recognizes that "in large measure the war was a revolution which started in the hamlets and that therefore the Viet Cong were already among the people when we went to the hills" (citing Francis West). It was necessary to remove the water from around the fish. Therefore, "until late 1968 the prevalent but uncodified policy was that of compulsory relocations and displacement by military pressure through combat operations, crop destruction, and the creation of specified strike zones." This too was "counterproductive" since, as U.S. advisers discovered: "Putting the people behind barbed wire against their will is not the first step towards earning



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their loyalty and support . . ." Other studies found that "our unobserved [i.e., indiscriminate] fire alienates the local peasants in most cases, thus harming our efforts to break down their loyalty to and support for the Viet Cong." Operation CEDAR FALLS removed thousands of people "presumed to be either members of VC families or VC laborers," then destroyed their villages and leveled the land with Rome Plows. In Operation MALHEUR thousands of villagers were evacuated and their houses burned: "The extensive use of artillery and air strikes with high explosives and napalm . . . resulted in large-scale destruction and the deaths of villagers and many refugees" in an area where "many villagers belonged to VC associations and voluntarily helped the VC," leaving a "picture of desolation" throughout the region.

After page upon page of such descriptions, the rational reader would conclude that the United States was guilty not only of aggression but also of unspeakable barbarism in Vietnam. Lewy, however, draws no such conclusions. In his view, the villagers were not "innocent"; they were supporting the South Vietnamese revolutionary forces that were resisting the United States and the client regime it had installed—what Lewy calls their "legitimate government." As Lewy concedes, the "legitimate government" was the fiefdom of a "privileged elite" supported mainly by "the military officer corps" and unable to win the loyalty of the people. He admits also that the South Vietnamese enemy had a "strong political apparatus" and "gradually and skillfully [drew villagers] into the NLF village organization" by such means as "redistributing wealth and status" while "the government relied for its survival on force alone."

It follows, then, that for Lewy an "innocent villager" is one who accepts the rule of a client regime imposed by foreign force. If a villager is not "innocent," he may legitimately be blasted by U.S. bombs, his villages may be burned to the ground, and he may be forcefully moved behind barbed wire where he is granted what Lewy calls "security" and "protection" by his "legitimate government." By revealing with such utter clarity the depths of moral degradation required to justify the U.S. war in Vietnam, Lewy has unwittingly provided one of the most devastating critiques of that war yet to appear in print.

WHILE THE SOUTH Vietnamese who tried to resist the U.S. attack were not "innocent," the U.S. government, according to Lewy, was. If, however, one does not postulate with Lewy that South Vietnam was imperial property, but, rather, that the South Vietnamese had a right to determine their own fate, then the uninvited U.S. presence was illegitimate from the start and we are dealing with unprovoked external aggression. This fundamental issue Lewy never addresses directly. It is intriguing to watch him maneuver. He begins by dismissing pacifists who repudiate resort to military force. He then turns to the narrower question of whether U.S. military force was properly used, never considering the fact that a nonpacifist may accept the resort to force in self-defense against armed attack in accordance with international and domestic law, while rejecting aggression.

Lewy concedes the popularity of the Viet Minh after the 1954 Geneva accords but stresses that the U.S. did not sign the final declaration calling for unifying elections and was therefore not bound by it. How this refusal to accept the terms of a political settlement gave the U.S. the right to impose its will on the people of South Vietnam Lewy never explains. He passes in silence over the U.S. government's actual response to the 1954 accords—specifically, the recommendation of the National Security Council to use force, in explicit violation of international law, in order to defeat "local Communist subversion or rebellion not constituting armed attack." The United States at once implemented this recommendation by installing a regime that launched a reign of terror and then, when the terrorism evoked a response it could not contain, joining it in expanding the violence, as noted above. Lewy merely assumes imperial prerogatives, noting that "American leaders did consider it vital not to lose Vietnam to a Communist-led insurgency directed and supported by North Vietnam." We will see how he distorts the uncontested facts about the extensive chronology of aggression and response.

"By May 1955," Lewy tells us, France "was out of Vietnam and the U.S. had assumed responsibility for large-scale economic and military aid, . . ." taking over what Lewy implies was the equally legitimate "responsibility" of the French. The subsequent war, Lewy explains, was "not of an international character" and the United States was "not an occupying power but a cobelligerent, there with the approval of the GVN," namely, the government it installed and defended from its population by violence. Lewy adopts the imperial premise just as easily as some Russian Lewy might swallow a parallel argument on the Soviet right to define the "legitimate" government of Czechoslovakia.

On matters of international law, Lewy always searches for the interpretation that will rationalize anything that the United States did. He cites a Rand Corporation study of the crop destruction program that indicated the program was seriously harming the civilian population and causing intense hatred of the United States and Saigon, while not even depriving the insurgents of food. Because the program violated the U.S. Army's own code, it was "disguised as a South Vietnamese activity." Nonetheless, Lewy defends it on the ground that the military *thought* and *claimed* that it was useful: It contributed to "the overall resource-denial program" and forced civilians into refugee camps, so that, "as a result, the VC suffered manpower shortages for support purposes." Furthermore, on some interpretations, international law "even grants the right of general devastation in order to deprive guerrillas of their sustenance."

Thus Lewy disposes of international law on two levels. First, he assumes the right of the United States to impose its will by force on the people of South Vietnam, an act he would regard as aggression if performed by hostile states; then he concludes that military necessity may justify annihilation. Thus, "If guerrillas live and operate among the people like fish in the water, then, legally, the entire school of fish may become a legitimate military target," in which case moral blame falls on the guerrillas, "who have enlarged the potential area of civilian death and damage." If the guerrillas continue to live in their villages, they are morally culpable and they, their families, and their neighbors may be incinerated.

On Lewy's principles, devastation and killing may be prodigious in relation to any military gains, but if there are claimed military benefits, such acts are at worst "counterproductive" or an example of "obtuseness and mistakes." Only admittedly pointless killing—something no state ever admits to—would be criminal. Lewy quotes

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Lewy distinguishes between the nasty ARVN and benevolent U.S. forces, ignoring such matters as the Phoenix program.

critics of the war who wrote that the United States was committing war crimes "in the layman's sense of this term" but fails to understand the reason for that qualification: Every state has its Guenther Lewys who will stretch an elastic legal code to legitimize atrocities by their own state.

IN DISCUSSING THE TREATment of prisoners, Lewy attempts to show how reasonable he is by acknowledging "several cases" of U.S. maltreatment and torture. These examples are treated with antiseptic brevity, and Lewy takes pains to put them into a context of the "frustration resulting from fighting an often unseen enemy, the resentments created by casualties," etc. In dealing with Communist inhumaneness, however, he gives abundant detail, with an unconcealed moral indignation totally absent from his grudging admission of U.S.-Saigon torture. Factors that might "explain" such acts by the enemy are treated with sarcasm ("Hanoi assures the world that despite the terrible crimes the U.S. pilots had committed . . ."). He even matter-of-factly "explains" Saigon torture: The police were not highly professional, prison guards were underpaid, and "South Vietnamese" have a low regard for human life.

Lewy makes no explicit comparison of numbers and modes of tortures, concentrating instead on the details of North Vietnamese treatment of U.S. pilots and avoiding the massive evidence that Saigon-U.S. torture and killing of prisoners was systematic and large scale. Another methodological dichotomy: He suggests that the injuries to Tiger Cage captives were simulated as part of a propaganda conspiracy among highly organized and politicized prisoners; the "debriefed" testimony of the U.S. pilots, on the other hand, is accepted at face value and without question. Lewy does not report the comparisons offered by journalists, for example, in the *Far Eastern Economic Review* (March 26, 1973), where it was noted that U.S. POWs "who talked of oriental tortures were all able to stand up and speak into microphones, showing scars here and there," whereas persons released from U.S.-run jails in Saigon were "incurably crippled while prolonged malnutrition had turned them into grotesque parodies of humanity."

Lewy also makes a sharp distinction between the nasty ARVN and the constraining U.S. forces: "The success achieved by American intervention against the abuse and torture of VC suspects is difficult to assess . . . [but] on the whole, American influence helped somewhat to mitigate the cruelties to be encountered in any civil war." This is based on no evidence, apart from self-serving statements of U.S. officials. It also flies in the face of such facts as U.S. sponsorship of the Phoenix program, American supply and training activities, funding of prisons, and equipping interrogation centers, as well as the replication of similar operations in Brazil, Chile, Uruguay, the Philippines, and elsewhere.

While Lewy carefully avoids the question of U.S. aggression, he insists that "The notion of 'foreign aggression' [is] in itself perfectly justified and supported by the facts," namely, North Vietnamese aggression. Despite his implicit premise of our imperial right to dominate, Lewy explicitly tries to legitimize the U.S. interventions as a response to North Vietnamese "aggression." Let us see how he proceeds to establish his claim.

Obviously, the question does not arise in the pre-1954 period. After Geneva, Lewy notes, "The Viet Minh, defending the interests of the peasants and basking in the glory of having defeated the French, not only were popular and in effective control of large parts of the South, but they also had a highly efficient organization ready to take advantage of the democratic liberties proclaimed in the final declaration of the Geneva conference." For this reason, it was "justifiable" for the U.S.-imposed regime temporarily to institute "dictatorial measures"; obviously, democratic procedures must be ruled out if the wrong people will win. Lewy then alleges that Communist terror "predictably goaded the Diem regime into stepping up its clumsily pursued and often brutal antiterrorist campaign. . . ." To support this conclusion he cites Jeffrey Race, who, in *War Comes to Long An*, in fact provided massive documentary evidence to the contrary. Race concluded that the Party held "that, except in limited circumstances, violence would not be used, even in self-defense, against the increasing repressiveness of the government," even though U.S.-backed terrorism was decimating "the southern organization." When self-defense was finally authorized, Race continues, government forces collapsed even though "the government terrorized far more than did the revolutionary movement. . . . By early 1965 revolutionary forces had gained victory in virtually all the rural areas of Long An" (the province near Saigon that he was studying).

How does Lewy succeed in inverting Race's conclusion? By avoiding the main thrust of his documentation and argument and citing only his conclusion that the 1959 decision to initiate armed activity (in response to years of terrorism by the U.S. client regime) was taken in Hanoi, a question that is totally irrelevant: The issue is the cause and effect relationship between U.S.-Diem terror and the use of force by the former Viet Minh. This is a typical example of how Lewy uses documentary evidence. He also cites historian Joseph Buttinger, but omits his conclusion that "future historians may very likely regard the claims that in South Vietnam the United States was defending a free country against foreign aggression among the great political lies of this century." U.S. government specialist Douglas Pike is also cited, but without his conclusion that the NLF "maintained that its contest with the GVN and the United States should be fought out at the political level and that the use of massed military might was in itself illegitimate" until it was forced by the U.S. and its client regime "to use counterforce to survive."

WHILE LEWY'S OWN U.S. government sources consistently regarded the NLF as the only "truly mass-based political party in South Vietnam" (Pike), Lewy concludes that the NLF was "impotent" as "revealed" by North Vietnamese dom-

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inance of the postwar society. He fails to note that this result followed years of U.S. violence that had virtually destroyed the NLF and the peasant society in which "the fish were swimming."

In a further effort to establish his thesis of North Vietnamese aggression, Lewy refers to a captured document reporting the Party meeting in Hanoi in December 1963. He in no way conveys the content of this internal Party document, which defines the war as "a struggle of the South Vietnamese people against the U.S. for national independence" and throughout uses such phrases as "the achievements of the South Vietnamese people." Its major recommendation is that "the revolutionary people in SVN must promote a spirit of self-reliance," struggling against "an enemy who is weak politically and morally but strong militarily and materially." The South Vietnamese people must "settle their own problems" since "revolution is a creative achievement of the masses." The role of the North is to build socialism and "to increase aid to the South," which must conduct its own struggle in a spirit of self-reliance.

Such an apologia is comparable to the worst examples of Nazi and Stalinist "scholarship."

It is astonishing to see this document offered as evidence for North Vietnamese aggression at a time when U.S. military forces were already devastating South Vietnam. The evidence is overwhelming that when the U.S. expanded its aggression to a full-scale invasion in early 1965, it had no evidence of a North Vietnamese troop presence, and thus obviously, for that reason alone, could not plead "collective self-defense." As late as July 1965, the Pentagon was still concerned over the "probability" that North Vietnamese units might be in or near the South, five months after the initiation of intensive bombing of North Vietnam. Lewy tries to counter such facts (which he systematically evades) by appealing to a May 1968 State Department study that claimed that elements of the North Vietnamese 325th Division arrived in the South between December 1964 and March 1965, with the earliest having left in October 1964 (after the August bombing of North Vietnam).

A historian, of course, would seek to determine the credibility of this study, introduced into the *Congressional Record* in an effort to gain some support for the war. Lewy does not; what emanates from the U.S. government is gospel truth. But let us take the study at face value. Lewy fails to point out that this document states that "[a]t least until 1959, [the 325th Division was] reportedly composed entirely of South Vietnamese" (its later composition is not mentioned). Thus a historian would conclude that quite possibly South Vietnam was invaded by South Vietnamese in early 1965 (three years after U.S. air attacks against South Vietnam began, ten years after the onset of U.S.-backed terrorism in the South). Furthermore, simple logic shows that the question is irrelevant to the issue of justification for the accelerated U.S. invasion in 1965, since the motives for that invasion must be judged on the basis of evidence then available, not what was concocted years later.

But for Lewy, logic is as irrelevant as fact. Thus he is able to write that "the commitment of American troops was defensive in the sense of seeking to forestall a South Vietnamese defeat" —in April 1965, before there was any evidence of the presence of North Vietnamese regular units. Note that his term "South Vietnamese" refers to the U.S. implantation that lacked popular support and was being overthrown by an indigenous rebellion despite massive application of U.S. force.

Lewy's commitment to a higher truth is shown in his handling of materials long exposed as propaganda fabrications, but convenient to his case. For example, he cites figures of 50,000 executed during the North Vietnamese land reform and also estimates by Hoang Van Chi of a half-million executed. His authority for the former figure is Bernard Fall, who in fact used Chi as his source. In a footnote Lewy writes, "Attempts by the Hanoi sympathizer D. Gareth Porter to deny the scope of this terror remain unconvincing." End of discussion. But, in fact, Porter had demonstrated that Chi (who was employed and subsidized by Saigon and U.S. intelligence) grossly falsified documents and based his estimate of deaths on one village where one person was allegedly executed, extrapolating from this sample to the whole of North Vietnam. The man who then headed the Central Psychological War Service for the Saigon army also informed the press later that the land reform atrocities were "100% fabricated" by Saigon authorities, with the assistance of U.S. and British intelligence. In a subsequent and more detailed study, Edwin Moise notes further that Chi made no mention of atrocities in 1955: "It was only in later years that his memories began to alter"; that is, after the Hanoi regime began producing evidence on "errors and failures" in the land reform, which Chi then proceeded to falsify, adding his "extrapolation." Lewy cites none of this material. To a true believer, it simply doesn't matter. Chi's evidence, now totally discredited by scholars, is good grist for propaganda tracts.

LEWY'S SCHOLARLY INTEGRITY is also measured by his handling of independent studies of the military operations that he examines. This is particularly important since he relies so heavily on military documents, a valuable but biased source. For example, in dealing with the U.S. command's version of Operation SPEEDY EXPRESS a historian would make careful use of the published study of this operation by Alex Shimkin and Kevin Buckley, and also of Buckley's notes, parts of which have been in print since 1975. Shimkin and Buckley found that the "awesome firepower" of the U.S. Ninth Infantry Division caused a "staggering number" of civilian deaths in a peaceful province that had been largely under local NLF control. Most of the killings were the result of "a relentless night and day barrage of rockets, shells, bombs and bullets from planes, artillery and helicopters." In one village every house was destroyed. A neighboring village was the target center for B-52 raids, according to a MACV location plot. Even in deep bunkers, children were killed by concussion —but then, they were not "innocent" since their parents supported the South Vietnamese enemy.

Describing the "spectacular" results of SPEEDY EXPRESS, Lewy disregards the Shimkin-Buckley study, remarking only that "The assertion of Kevin P. Buckley of *Newsweek* that perhaps close to half of the more than 10,000 killed . . . were noncombatants remains unsubstantiated." The assertion was not Buckley's; he cited a U.S. pacification official. But it is true that it remains "unsubstantiated." So does the official

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figure of 10,883 killed that Lewy cites, which is of course an ugly joke down to the last digit. The U.S. command had no idea how many people were killed by bombs, napalm, and antipersonnel weapons. An honest review would at least have mentioned some of the horrifying material collected by Shimkin and Buckley and would have considered the significance of this murderous U.S. assault on a peaceful region under local NLF control. Lewy, however, keeps to official sources, merely expressing some skepticism as to whether what he calls "the amazing results of Operation SPEEDY EXPRESS" should "be accepted at face value."

Lewy's blind faith in his nation's leaders is equally apparent in his discussion of the bombing of North Vietnam. According to U.S. government documents, the bombing (1965–1972) was aimed at military targets, and damage to civilians was minimal. Western diplomats, non-Communist journalists, and numerous visitors have reported that large areas of North Vietnam were totally devastated. Much of the country is a moonscape with no visible sign of life. The city of Vinh was leveled in 1965 and later was so heavily bombed that not even the foundations of buildings remain. But according to Lewy, nothing like this happened. How can one dare to confront government pronouncements with mere facts and data? The city of Thanh Hoa was bombed, but then, there was an important bridge several miles away. As Lewy could easily have discovered, however, the Thanh Hoa hospital, destroyed by bombing, is miles from the bridge, and the area between was largely spared. The bombing of the bridge was highly concentrated so that everything nearby was reduced to rubble, including a former village. But of course the destruction of the village, even if it were acknowledged, falls under "military necessity." Such an apologia for massacre and destruction is comparable only to the worst cases of Nazi and Stalinist "scholarship."

THIS TRACT ABOUNDS with comments that would simply be regarded as comical if discovered in enemy propaganda. Thus Lewy writes that "with regard to the years 1965–67 it is possible to maintain that the North Vietnamese merely matched the massive American buildup." That is, the estimated 50,000 North Vietnamese "merely matched" the 500,000-man U.S. Expeditionary Force backed by enormous air and naval power. (Had Lewy written that the North Vietnamese "merely matched" the buildup of Korean and Thai mercenaries it would have been almost accurate.) Of course, one can discern Lewy's meaning if one allows for his Orwellian terminology. Elsewhere he states that the "enemy" was perhaps more than matching the U.S. military buildup in late 1965. A few computations reveal, as other sources have reported, that this "enemy buildup" was overwhelmingly local recruitment by *the South Vietnamese* revolutionaries in direct response to the full-scale U.S. invasion. To Lewy, however, these South Vietnamese are aggressors in their own villages, while the U.S. is defending the "security" of the population by blasting them out of their homes and driving them to concentration camps where they can be "protected."

As these few examples illustrate, *America in Vietnam* is a parody of scholarship. Intellectually worthless and morally grotesque, it is, nevertheless, important—not for its substance, but for what it reveals about Western culture. Imagine that the Russian government were to release documents concerning the 1956 invasion of Hungary, and that some Soviet "historian" were to use them, dismissing out of hand the question of the legitimacy of the Russian intervention, distorting the documentation he cites, accepting the most ludicrous propaganda fabrications, omitting crucial evidence and historical context, and offering the moral premise that it is legitimate to massacre Hungarians who cooperate with Hungarian "terrorists" and thus are not "innocent." Perhaps such a study would be cited by some research center here as a specimen of Soviet propaganda. It is inconceivable, however, that it would be published by the Oxford University Press as an authoritative account of the Soviet intervention, or that it would be described by U.S. reviewers as "sophisticated and profound" (*Foreign Affairs*).

Thus the reaction to this squalid tract is of interest, though its content is virtually without value apart from adding some footnotes to military history. Needless to say, this is not the judgment that will be presented by the Western media, though it is difficult to believe that such a clumsy piece of propaganda will enter the scholarly record.

***HUNT*, by A. Alvarez. Simon & Schuster, 288 pp., $9.95.**

Deuce in the hole

JULIAN SYMONS

ONE THEME THAT HAS been much used in thrillers since the form became sophisticated in the decade before World War II is that of the innocent man who finds himself at the center of dangerous and puzzling activities—Eric Ambler's *Journey Into Fear* is a prototype. Another theme, linked with it, is that of the hunter and the hunted (see almost any early Graham Greene "entertainment"). Such approaches attract intellectuals because they have a resonance beyond the literal, echoing back to the idea of the scapegoat, the figure whose guilt or innocence bears little relation to his quality as a necessary sacrifice.

It is natural that the thriller should interest A. Alvarez. Alvarez is a poet and, in his time, a discoverer of rebellious tendencies among poets who, to others, have seemed bound to orthodoxy; a believer in the value of writing produced under emotional pressures that include the pressure of possible suicide; and a man attracted by both the physical danger of rock climbing and the financial pressure of gambling. *Hunt* is a thriller about someone caught up in violence, and also about the centripetal tendency of modern society, including the possibility that eventually all knowledge about everybody will be stored in a small central computer, ready for use by whatever group is exercising power. As a thriller *Hunt* is not fully successful, but it contains some unusually interesting ideas.

Conrad Jessup is a man in his thirties, remote from his wife and two sons, with a flickering desire to paint and an urgent need to gamble. What's up with Conrad, why is he so near the end of his emotional tether? Alvarez

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A portrait of someone for whom human relationships and responsibilities are no longer possible has rarely been better done.

doesn't provide an answer, or even seem to feel the need of one—implying perhaps that discontent is the lot of modern man. Conrad makes a killing on a long shot at the races and then another in a poker game. He goes for a late night walk on Hampstead Heath with the dog; there he finds a girl who has been attacked and injured; he calls the police anonymously, he is recognized—and we are on our way. The police at first suspect him of attacking the girl; he is watched and followed by mysterious figures, feels impelled to see the girl in the hospital, and, when she has recovered, starts an affair with her. Conrad goes on gambling, leaves his wife, and, with his dog, moves into a room in Soho. The police and others advise him to leave the girl alone. He gets into a big poker game and loses a lot of money. Finally, he discovers some ultimate realities in a showdown on the Heath. That is the story, briefly summarized.

The good things first. The sense of a slowly disintegrating personality, and of its relationship to a society in decay, is beautifully conveyed in *Hunt*. When Conrad buys an evening paper to see if there is anything in it about the girl on Hampstead Heath, the front page shows "smeared, grayish photographs" of a man sitting on the ground holding his head. "There was rubble all around, his face and shirt were splattered with blood." This was the victim of a car accident, but it might just as well have been a riot or a demonstration: It is suggested that such pictures appear every day. Many passages in the book seem to presage the end of a time—storms in which rain is "bouncing off the pavements in a gray haze," the air of menace in a sexual encounter, a lunatic met in an Underground train, Conrad's overwhelming sense of his own triviality. Why bother to paint when he will never be any good? What is the point of doing anything except gambling, when "somewhere in some central computer there must be a tape on everyone," and from what such tapes portend there is no escape?

The failure of Conrad as husband and father is almost complete. Confronted with the possibility that his wife has a lover, he finds it unbelievable. She's got the TV she's always watching, isn't that enough? His alienation from the children is poignantly shown when he sees wife, lover, and the boys playing cricket on the Heath. The scene again seems to him incredible. "With his clenched fists hanging inertly at his side like lead weights, he watched them clowning together on the barbered grass and understood that the real betrayal was not that Betsy should have found herself a lover but that, having found him, joy should have entered all their lives." The portrait of somebody for whom human relationships and responsibilities are no longer possible (in another significant passage Conrad finds himself unable to visit or communicate with an office friend and benefactor after the man's cancer operation) has rarely been better done.

As a thriller, however, the book is less satisfactory. The form may seem simple, no more than a matter of fitting bits of action between the reflective passages, but in fact a degree of expertise is required that Alvarez does not yet possess. He goes for as small a ration of violence as possible: The casualties add up to one girl assaulted but not badly hurt, and one dog killed. Although this is in theory a good approach—the best thrillers contain much more menace than violence—in Alvarez's practice it just means that one feels rather little is happening. One can't discuss the plot of such a book in detail without spoiling the reader's enjoyment; it must be said, though, that the story is heavily dependent on coincidence, and on stupid behavior by most of the people involved, in particular the villains. It is a further weakness that no attempt is made to give any actuality to Jessup's work as "an employee of an international company." He has office colleagues and drinking companions, but is never seen doing any work, or having any interests beyond painting, gambling, and sex. This is not to say that *Hunt* is dull. On the contrary, it is consistently readable and enjoyable. It is simply that when the wraps are taken off at the end, the reaction is one of disappointment, of saying, "Is *that* all?" And when we come to consider the behavior of the principal characters, it seems always implausible and occasionally absurd.

To say this is to recognize that Alvarez is in a different class from most of the writers who attempt the thriller form, and to judge him accordingly. The idea of fusing the special problems of Conrad Jessup with the problem of living in the violent society of the seventies by putting this most recent dangling man into the context of the thriller was a brilliant one, and Alvarez has plenty of sensibility and intelligence. His book is more interesting than most conventional successes, but on what he may regard as the humdrum level of construction, of making sure that the jigsaw pieces fit, it must be called a failure. ❏

ROCKY MOUNTAIN EMPIRE: The Latter-Day Saints Today, by Samuel W. Taylor. Macmillan, 273 pp., $12.95.

The Mormon compromise

JOSEPH R. STROMBERG

BY SAMUEL W. TAYLOR'S account, he grew up in the heart of Mormon country, loyal but a bit eccentric (for a Mormon). As a descendant of a pioneer LDS church president and a son of a polygamous marriage, he maintained a skeptical attitude toward changes in church doctrine and emphases. Thus, during his ill-fated stay at Brigham Young University, Taylor repeatedly got into trouble as the maverick editor of the student paper. A fan of H. L. Mencken (in itself unusual for a Mormon), he found his rebelliousness strengthened when he read Bernard De Voto's "The Centennial of Mormonism" in the January 1930 issue of *The American Mercury*.

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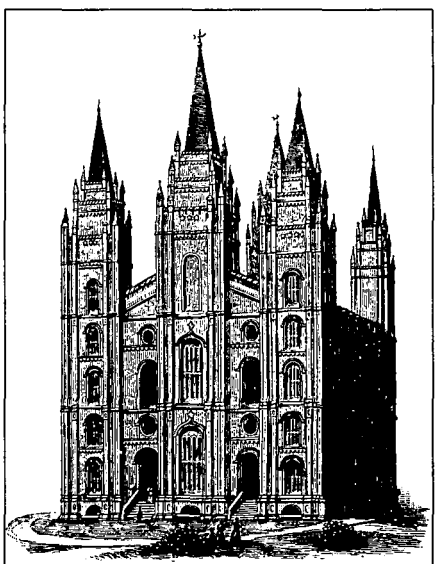
In that article, De Voto contrasted the Mormon ideals of "free agency" (free will) and internal church democracy with the realities of hierarchy, conformity, and even mild "dictatorship." He went on to argue that the Saints' insistence that all cultural activities must reinforce faith led to a noticeable lack of creativity (cf. socialist realism). This essay, combined with the influence of a skeptical BYU professor, apparently set Taylor off on his career as a writer on Mormon topics. Rooted in Mormon culture, "Joe Budro" (a pseudonym the author adopts halfway through the book) is no angry critic seeking to divest the LDS church of its wealth, but more an outsider-insider. As such, he writes in a personal and anecdotal manner, though his assertions are backed up by copious footnotes and bibliography.

With the LDS church dominating the economics, politics, media, and opinion of the Rocky Mountain area, above all in Utah, the author has depended for hard-to-get information on his own knowledge of the sources, on informants, and on what he calls the active Salt Lake City *samizdat*. Utah, Taylor notes, is as much a state of mind as a place; his research and first-hand knowledge give us a look—critical but not hostile—behind the otherwise impenetrable Zion Curtain.

Comparing the values of his grandfather's day with those of present-day Mormonism, Taylor regretfully concludes that while much was gained by the church's capitulation to the United States government, much also was lost. Major turning points came in 1887, when the intransigent John Taylor (church president and the author's grandfather) died and when Congress passed the antipolygamy Edmunds-Tucker Act and penalized the church with fines and escheatment of property; in 1890, when LDS president Wilford Woodruff issued his manifesto terminating church sanction of plural marriage; and finally, in 1907, when, in the interest of securing the Utah Senate seat of Reed Smoot, a Mormon apostle, a second manifesto threatened excommunication of Mormons who still practiced polygamy.

For Taylor, Mormon history represents continued "adaptation to unrelenting pressure." Once they compromised—surrendered, really—on polygamy, which had been a central belief of the early church, the Saints could begin flowing along rapidly and comfortably in the American mainstream. The growing respectability of the church, together with its elaborate organization (Mark Twain thought the Mormons ahead of the Prussian army on that score), allowed it to become perhaps the richest church in the world, per capita, and its leaders, as directors of its many enterprises, wealthy men. With investments in the hundreds of millions of dollars, the LDS church has truly arrived, and has wholeheartedly adopted the materialism and patriotism of the nation that surrounds it.

THE EARLY CHURCH, AS Taylor shows, was a quite different thing. Unwilling to separate everyday life, including the keeping of order, or "politics," from religion, Mormonism offered a total way



MORMON TEMPLE

of life. Economic cooperation through the "United Order," which tied private production to a partially communalized consumption, met the problems both of community productivity and of welfare. And church courts handled disputes, religious and temporal, among Mormons, wielding the threat of disfellowship (or excommunication) as the ultimate official punishment. (While almost never openly sanctioned by church leaders, informal violence played a role at times in keeping the Mormon order intact.) The pioneer church had a panoply of service organizations overseen by a priesthood consisting of all active male members above a certain age. Although Mormonism in important respects is entirely sui generis, historically, it can be viewed in part as a radical Americanization of Protestantism, with indigenous American scriptures, an emphasis on economic cooperation and progress, and a formal consensus politics reminiscent of Puritanism.

Unfortunately, the cohesiveness of the Mormons created many enemies for them in the "liberal" United States. As Taylor observes, "a power struggle, not polygamy, brought the church into conflict with the nation." With its own courts, social welfare institutions, and ongoing leadership, the pioneer church simply did not need or want the U.S. government. Perhaps that was its worst crime of all. Expelled from Illinois, driven from Missouri, the Mormons resolved to establish their kingdom of God on nominally Mexican territory, only to find that, with the Mexican War, the Americans had once again caught up with them and fully intended to "civilize" them into the "liberal" Protestant mainstream.

After being harassed by federal troops in the so-called "Mormon War," and kept in territorial status for 45 years while outsiders tried to reconstruct them, the Mormons finally gave in. Their fate tells us something about the realities of the Bill of Rights in nineteenth—and twentieth—century America. Appeal as they might to constitutional guarantees of religious liberty, the Saints' property was confiscated and their leaders forced into hiding over the practice of polygamy. With fine irony, Mormon leaders had to flee to Mexico to find a bit of freedom to practice their beliefs.

In 1856, the fledgling Republican party blurred the distinction between polygamy, certainly as voluntary as monogamy then was, and slavery, founded on force; it called for the arrest and eventual destruction of those "twin relics of barbarism." By the twentieth century, both wishes had been realized, though at a tremendous cost to the American values of political independence, the right of revolution, and the whole idea of religious liberty. Armed with a constricted conception of religious freedom and the determination to bring a certain *form* of self-government to a people who were already governing themselves, the keepers of official liberalism in Washington asserted the prerogatives of the central state and curtailed the Mormon experiment, just as they had destroyed the Confederate experiment, humbled many an Indian nation, and would humble many a people to come.

John Taylor, who died in exile, declared in 1880, "I defy the United

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States. I will obey God." His successors, seeing the political writing on the wall, abandoned polygamy, the cause for which Taylor and many others had suffered much—at first in words, and more gradually, in practice. Adapting itself to the realities of federal power and a hostile public opinion, the LDS church evolved from a practical-utopian enterprise into a thoroughly respectable, conservative, and bureaucratic structure with few distinctive features. It has abandoned its earlier distinguishing characteristics in favor of Americanization, so much so that it is now chiefly known for its dietary restrictions ("the word of wisdom"), which played a much smaller role in the pioneer church. From advocacy and practice of plural marriage, the LDS church has come full circle and supports government suppression of the die-hard Mormon fundamentalists who still practice polygamy; it considers adultery a sin second only to murder.

Given their inherited institutions and energy, the Saints, once they were forced to fit the American mold, emerged as a great success story. This success entailed a number of costs that Taylor deplores. Unfortunately, he draws no broader conclusions—indeed, his tendency to skirt the hard politics of the later Mormon period is my one criticism of his book. The author says little, for instance, about the church's very active support for maximum government interference in private conduct in the interest of a fundamentalist morality. (This policy, ironically, appears to violate Mormonism's own libertarian premise of "free agency.")

Like other groups who chanced to be in the path of the U.S. historical locomotive, the self-governing Mormons were forcibly "democratized" in the prescribed mold, at a high cost to religious freedom and local autonomy. Those who like to think that all things turn out for the best in America ought to reflect on the Mormon experience, and consider that perhaps John Stuart Mill was correct when he said that "[no] community has a right to force another to be civilized."

A final note: all conclusions aside, this is quite simply an enjoyable book. Anyone in any way acquainted with or interested in the subject owes it to himself to curl up with his cup of Postum—or, if he is particularly wanton, coffee—and dig into this very readable book.

FILM

WHEN YOU COMIN' BACK, RED RYDER, directed by Milton Katselas.

ICE CASTLES, directed by Donald Wrye.

The dogs of winter

STEPHEN HARVEY

FOR MOVIE DIEHARDS, January and February are the cruelest months, when paltry leftovers from the studio shelves make their bashful appearance after the feast of Christmas blockbusters has been devoured. Film companies assume that audiences crawl en masse into hibernation as soon as Epiphany is over; then they make sure of it by unloading only those films that could barely induce the average fan to switch channels at home, much less brave wind and sleet to trek to the local cinema. Occasionally a bona fide if recherché gem gets buried in the midwinter snows of indifference, as with last year's *The Duellists*; more often, though, the niche in the Hall of Obscurity goes to those efforts even a programmer for Home Box Office couldn't love.

One such is Mark Medoff's strident film adaptation of his play, *When You Comin' Back, Red Ryder*, an acutely depressing movie not merely because of its own failings on just about every level, but for what it suggests about the rather lax standards of our contemporary theater. *Red Ryder* was a much lauded, long-running off-Broadway success a few years ago; while I never saw it on stage, if the film is an accurate indication, it's hard to imagine how anybody ever took this material seriously in the first place. The plot is nothing more than a defoliated *Petrified Forest*: Once more the denizens of a greasy spoon set in a somnolent corner of the Southwest are roused from their torpor by a violent intruder, who taunts them into realizing a few plain truths about themselves before he's dispatched in retribution for his life of misdeeds. Sherwood's 1935 play featured Humphrey Bogart as Duke Mantee, the last of the bigtime gangsters. Since this piece is set in the late sixties, Medoff shows off his originality by substituting Marjoe Gortner as Teddy, the ultimate paranoid hippie freak, whose sadistic rages are explained away by the fact that he is, of course, a Vietnam veteran. This script plumbs the shallows with a few ripe homilies to give it all the trappings of seriousness; it announces that the folk heroes of a more innocent America have no meaning for this corrupt age, that people tend to deceive themselves just as readily as they lie to each other, and similar revelations. However, it would be fruitless to search for a coherent message in all this, even if you wanted one: Medoff's hyped-up loquacity only camouflages what is basically a rather threadbare exploitation melodrama. *Red Ryder* encourages us to feel superior to both the antihero and his dense, impotent victims, while we relish the spectacle of watching them squirm.

Like many theatrical adaptations, *Red Ryder* tries to mask its claustrophobic one-set stage origins by opening up the action on screen. The first half-hour or so is spent shuffling parallel scenes of the various dramatis personae plodding through their unfulfilled lives on the eve of their unexpected and fateful lunchroom encounter. The unfortunates include a jocular middle-aged cripple (Pat Hingle) with an embarrassing predilection for young girls, an edgy violinist (Lee Grant) and her overbearing manager-husband (Hal Linden), a sweetly moronic young waitress (Stephanie Faracy) with the proportions of a mini-zeppelin, and the title character (Peter Firth), a puny, sixties loser with delusions of fifties machismo. Meanwhile, across the border, their nemesis rips off a succession of hapless Latinos, to the uninflected astonishment of his tie-dyed moll—a

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"special guest appearance" by Candy Clark.

Medoff's people would be monochromatic sketches even if superbly rendered, but here director Milton Katselas has elected to color them in with neon hues. Katselas's favorite method of psychological revelation is to shove the camera practically up the performers' noses in order to catch every last paroxysm of pathos. Yet his cinematic technique is so gross that, rather than inspiring pity for the characters, it makes us cringe with mortification for the actors. In the movie's very first shot, the camera ogles Candy Clark as she frolics naked in a mountain stream; soon afterwards, Gortner gets to spread his cheeks for a U.S. Customs proctologist in quest of a cache of dope, and Grant crawls discreetly off screen to give Linden a wifely servicing. But not to worry—you get to see more of her when Gortner invades the cafe the next morning and strips off her blouse in a fit of bravado. (Cut to a close-up of her naked bouncing bosom.) Not that there aren't other, more oblique ways to demean a performer: Why allow Gortner to corner the market on contempt for Hingle's limp and Faracy's excess avoirdupois when the camera can make its own silent comment in shot after lingering shot?

When all else fails, there's always the soundtrack for an added fillip of irony. Snatches of "The Thrill Is Gone" preface Grant's dispirited fulfillment of her marital obligations; "Are You Sincere?" asks some invisible jukebox when Hingle haltingly tries to seduce Faracy over a box of Oreos. You always know in advance when Marjoe Gortner is going to invade the screen again, because his entrances are preceded by a syncopated snake rattle over the music track—a case of painting the lily if there ever was one.

Gortner's acting is precisely the kind that passes for virtuoso in some quarters, mainly because there is so much of it. Since the success of the documentary film on his Elmer Gantryish origins, Gortner may have shifted his routine from the revivalist tent to the secular sound stage, but his tactics haven't altered accordingly. He's still bounding about, baring his teeth and flashing his blue orbs, spewing out his lines in fervent cadences. The performance is an orgy of self-love, reminiscent of those excruciatingly "sincere" Vegas chansonnières specializing in songs like "I Gotta Be Me." Finally, Gortner the actor becomes even more oppressive company than the character he plays. You keep longing for the sheriff to come along and put an end to the hostages' ordeal, not so much because you've come to care for their respective fates, but just to get Gortner off screen once and for all.

As the film's producer as well as its principal player, Gortner presumably knew what he was up against, but one can only commiserate with the rest of the cast. Peter Firth, best known thus far for *Equus*, seems rather an eccentric choice to play a frustrated teenager languishing in the barren American desert; his hair darkened and slicked back into a D.A., he mostly glowers and pouts and struggles with all those nasal vowels. Apparently Candy Clark has been looking at a few too many TV reruns of early Shirley MacLaine for her own good, but she has added one signature touch of her own—a climactic epileptic seizure recycled from her cameo in last year's remake of *The Big Sleep*. (It didn't work there either.) Newcomer Faracy's timid clumsiness could be appealing if her director didn't use it as a weapon to clobber her with. The less said about the rest of the cast the better. In the end, I can't figure out who in the world this film could have been aimed at; it's too ponderous for the action crowd, and too simple-minded to interest anyone else. *Red Ryder* belongs on the long, lonesome trail to that Boot Hill reserved for stillborn movies with delusions of grandeur.

ICE CASTLES, ON THE OTHER hand, may be pure, untrammeled slush, but it's unquestionably a movie made to order for its time. Like last fall's *Slow Dancing in the Big City*, this is yet another of *Rocky*'s maudlin daughters, in which a late-starting underdog overcomes emotional woes and a major medical calamity to score a last-reel professional comeback by dint of her own iron will and the support of Those Who Love Her. The shameless bathos of the plot makes *Rocky* look almost Bressonian in its restraint. Lexie (Lynn-Holly Johnson) is a gifted skater from a one-pond town in Iowa who is lifted out of obscurity by a brusque coach/promoter (Jennifer Warren). Touted by the media as the lovable All-American Kid from Nowhere, Lexie copes badly with the cold, pragmatic world of big-league sports. An accident costs her her sight.

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Blindness understandably dampens her spirits, but not for long; soon Lexie's father (Tom Skerritt), her earnest young beau (Robby Benson), and her hometown trainer (Colleen Dewhurst) shake her out of it by schooling her for a return to the rink. And if you can't figure out how it ends, then you just haven't been going to the movies often enough in the past two years.

You'd have to be a glacier not to melt at least once at *Ice Castles*' flagrant assault on the emotions: My turn came when the sightless Lexie glided to a three-point curtsy for her adoring fans at the finale of her reentry into the limelight, though I resented having a film as cloddishly obvious as this one get to me, even momentarily. It just might have been genuinely touching had we not been cued constantly on when to reach for the kleenex. Accompanied by the tinkly kitsch of Marvin Hamlisch's score, there never was such a movie for people hugging, with tears in their eyes, as they tell each other over and over again how wonderful they all are.

The director, Donald Wrye (who also collaborated on the script), served his apprenticeship for his feature debut here via a series of TV movies, and his training shows: *Ice Castles* is one long series of mini-crescendos, 10-minute spurts of triumph or tragedy leading up to breaks for commercials that never come. Even most of the cast smacks of television making-do, with the actors standing in for the really big stars the producer couldn't hope to snare. Stoic, bearded Skerritt provides a reasonable substitute for Kris Kristofferson, while Benson does a sub-Travolta turn, all wistful dark-browed glances and slurred inarticulateness. (The most uproarious moment in the movie comes when the hockey coach inquires why a kid like Benson, who "can speak English," would choose to join the team rather than complete a pre-med course.) Playing Annie Sullivan to the heroine's Helen Keller, Colleen Dewhurst does that raspy-voiced earth mother routine which by now is second nature to her, offsetting Lynn-Holly Johnson's plaintive victim of circumstances. A professional with the Ice Capades, Johnson is indeed a ravishing skater, and the sequences devoted to her pirouettes on ice are really exhilarating whenever the camera is kept from adding too many redundant curlicues of its own. Nevertheless, *Ice Castles* could be commended only to those who enjoy being devastated by sentiment unconfined, and don't care how calculatedly mawkish the catalyst is. ❏

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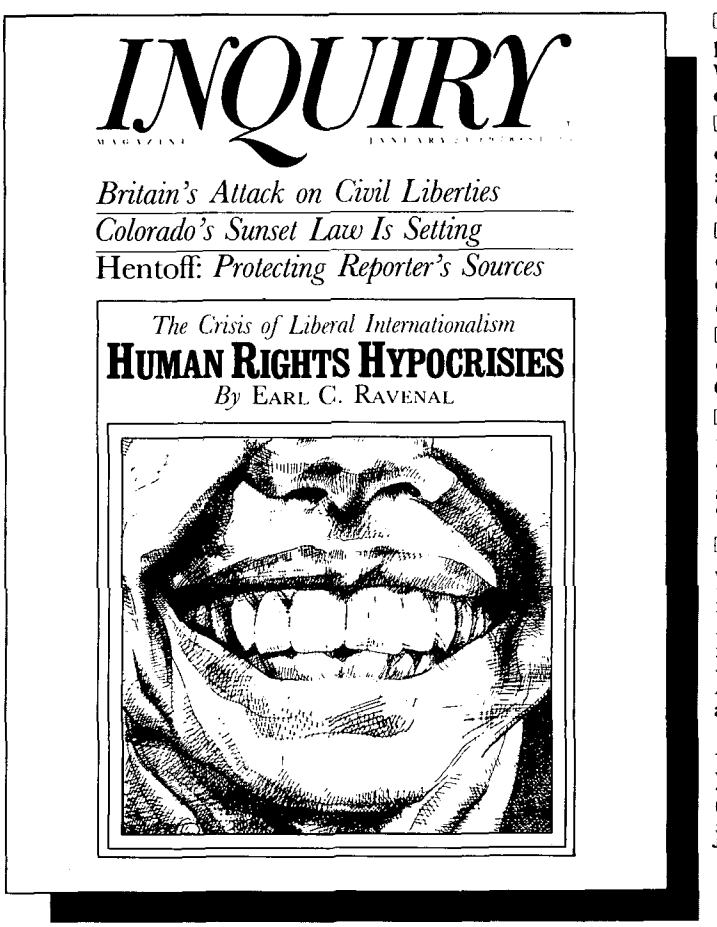

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